

Article 10.

Miscellaneous Insurer Financial Provisions.

Part 1. Conversion of Stock and Mutual Insurers.

§ 58-10-1. Stock to mutual insurer conversion.

Any domestic stock life insurance corporation may become a mutual life insurance corporation, and to that end may carry out a plan for the acquisition of shares of its capital stock: Provided, however, that such plan (i) shall have been adopted by a vote of a majority of the directors of such corporation; (ii) shall have been approved by a vote of the holders of two thirds of the stock outstanding at the time of issuing the call for a meeting for that purpose; (iii) shall have been submitted to the Commissioner and shall have been approved by him in writing, and (iv) shall have been approved by a majority vote of the policyholders (including, for the purpose of this Part, the employer or the president, secretary or other executive officer of any corporation or association to which a master group policy has been issued, but excluding the holders of certificates or policies issued under or in connection with a master group policy) voting at said meeting, called for that purpose, at which meeting only such policyholders whose insurance shall then be in force and shall have been in force for at least one year prior to such a meeting shall be entitled to vote; notice of such a meeting shall be given by mailing such notice, postage prepaid, from the home office of such corporation at least 30 days prior to such meeting to such policyholders at their last known post-office addresses: Provided, that personal delivery of such written notice to any policyholder may be in lieu of mailing the same; and such meeting shall be otherwise provided for and conducted in such a manner as shall be provided in such plan: Provided, however, that policyholders may vote in person, by proxy, or by mail; that all such votes shall be cast by ballot, and a representative of the Commissioner shall supervise and direct the methods and procedure of said meeting and appoint an adequate number of inspectors to conduct the voting at said meeting who shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and the canvass of the vote, and who shall certify to the said representative and to the corporation the results thereof, and with respect thereto shall act under such rules and regulations as shall be prescribed by the Commissioner; that all necessary expenses incurred by the Commissioner or his representative shall be paid by the corporation as certified to by said Commissioner. Every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the Commissioner: Provided, that neither such plan, nor any payment thereunder, nor any payment not fixed by such plan, shall be approved by the Commissioner, if the making of such payment shall reduce the assets of the corporation to an amount less than the entire liabilities of the corporation, including therein the net values of its outstanding contracts according to the standard adopted by the Commissioner, and also all other funds, contingent reserves and surplus which the corporation is required by order or direction of the Commissioner to maintain, save so much of the surplus as shall have been appropriated or paid under such plan. (1937, c. 231, s. 1; 1991, c. 720, s. 4; 1995, c. 318, s. 1; 2001-223, s. 9.3.)

§ 58-10-5. Stock acquired to be turned over to voting trust until all stock acquired; dividends repaid to corporation for beneficiaries.

If a domestic stock life insurance corporation shall determine to become a mutual life insurance corporation it may, in carrying out any plan to that end under the provisions of

G.S. 58-10-1, acquire any shares of its own stock by gift, devise, or purchase. And until all such shares are acquired, any shares so acquired shall be acquired in trust for the policyholders of the corporation as hereinafter provided, and shall be assigned and transferred on the books of the corporation to not less than three nor more than five trustees, and be held by them in trust and be voted by such trustees at all corporate meetings at which stockholders have the right to vote until all of the capital stock of such corporation is acquired, when the entire capital stock shall be retired and canceled; and thereupon, unless sooner incorporated as such, the corporation shall be and become a mutual life insurance corporation without capital stock. Said trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under G.S. 58-10-1. Said trustees shall file with the corporation and with the Commissioner a verified acceptance of their appointments and declaration that they will faithfully discharge their duties as such trustees. After the payment of such dividends to stockholders or former stockholders as may have been provided in the plan adopted under G.S. 58-10-1, all dividends and other sums received by said trustees on said shares of stock so acquired, after paying the necessary expenses of executing said trust, shall be immediately repaid to said corporation for the benefit of all who are or may become policyholders of said corporation and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said corporation, and be apportionable accordingly as a part of said surplus among said policyholders. (1937, c. 231, s. 2; 1991, c. 720, s. 4; 2011-284, s. 55.)

§ 58-10-10. Mutual to stock insurer conversion.

(a) A domestic mutual insurer may convert to a domestic stock insurer under a plan that is approved in advance by the Commissioner.

(b) The Commissioner shall not approve the plan unless:

- (1) It is fair and equitable to the insurer's policyholders.
- (2) It is adopted by the insurer's board of directors in accordance with the insurer's bylaws and approved by a vote of not less than two-thirds of the insurer's members voting on it in person, by proxy, or by mail at a meeting called for the purpose of voting on the plan, pursuant to reasonable notice and procedure as approved by the Commissioner. If the company is a life insurer, the right to vote may be limited, as its bylaws provide, to members whose policies are other than term or group policies and have been in effect for more than one year.
- (3) Each policyholder's equity in the insurer is determinable under a fair and reasonable formula approved by the Commissioner. The equity shall be based upon the insurer's entire statutory surplus after deducting certificates of contribution, guaranty capital certificates, and similar evidences of indebtedness included in an insurer's statutory surplus.
- (4) The policyholders entitled to vote on the plan and participate in the purchase of stock and distribution of assets include all policyholders on the date the plan was adopted by the insurer's board of directors.
- (5) The plan provides that each policyholder specified in subdivision (4) of this subsection receives a preemptive right to acquire a proportionate part of all of the proposed capital stock of the insurer or of all of the stock of a corporation affiliated with the insurer within a designated reasonable period as the part is

determinable under the plan of conversion; and to apply toward the purchase of the stock the amount of the policyholder's equity in the insurer under subdivision (3) of this subsection. The plan must provide for an equitable distribution of fractional interests.

- (6) The plan provides for payment to each policyholder of the policyholder's entire equity in the insurer; with that payment to be applied toward the purchase of stock to which the policyholder is entitled preemptively or to be made in cash, or both. The cash payment may not exceed fifty percent (50%) of each policyholder's equity. The stock purchased, together with the cash payment, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of the mutual insurer.
- (7) Shares are to be offered to policyholders at a price not greater than that of shares to be subsequently offered to others.
- (8) The Commissioner finds that the insurer's management has not, through reduction of volume of new business written, through policy cancellations, or through any other means, sought to (i) reduce, limit, or affect the number or identity of the insurer's members entitled to participate in the plan or (ii) secure for the individuals constituting management any unfair advantage through the plan.
- (9) The plan, when completed, provides that the insurer's capital and surplus are not less than the minimum required of a domestic stock insurer transacting the same kinds of insurance, are reasonable in relation to the insurer's outstanding liabilities, and are adequate to meet its financial needs.

(c) With respect to an insurer with a guaranty capital, the conversion plan shall be approved by a vote of not less than two-thirds of the insurer's guaranty capital shareholders and policyholders as provided for in subdivision (b)(2) of this section. The plan may provide for the issuance of stock in exchange for outstanding guaranty capital shares at their redemption value subject to the conditions in subsection (b) of this section.

(d) The Commissioner may schedule a public hearing on the proposed conversion plan.

(e) The Commissioner may retain, at the mutual insurer's expense, any attorneys, actuaries, economists, accountants, or other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed conversion plan.

(f) The corporate existence of the mutual company continues in the stock company created under this section. All assets, rights, franchises, and interests of the former mutual insurer, in and to real or personal property, are deemed to be transferred to and vested in the stock insurer, without any other deed or transfer; and the stock insurer simultaneously assumes all of the obligations and liabilities of the former mutual insurer.

(g) No director, officer, or employee of the insurer shall receive:

- (1) Any fee, commission, compensation, or other valuable consideration for aiding, promoting, or assisting in the conversion of the mutual insurer to a domestic stock insurer, other than compensation paid to any director, officer, or employee of the insurer in the ordinary course of business; or
- (2) Any distribution of the assets, surplus, or capital of the insurer as part of a conversion.

(h) The Commissioner may adopt rules to carry out the provisions of this section. (1999-369, s. 6; 2001-223, s. 9.5.)

§ 58-10-12. Conversion plan requirements.

(a) As used in this section:

- (1) "Closed block" means an allocation of assets for a defined group of in-force policies which, together with the premiums of those policies and related investment earnings, are expected to be sufficient to maintain the payments of guaranteed benefits, certain expenses, and continuation of the current dividend scale on the closed block, if experience does not change.
- (2) "Converting mutual" means a domestic mutual insurance company that has adopted a plan of conversion and an amendment to its articles of incorporation under this section that will, upon consummation, result in the domestic mutual insurance company converting into a domestic stock insurance company.
- (3) "Eligible member" means a person who:
 - a. Is a member of the converting mutual on the date the converting mutual's board of directors adopts a resolution proposing a plan of conversion and an amendment to the articles of incorporation; and
 - b. Continues to be a member of the converting mutual on the effective date of the conversion.
- (4) "Former mutual" means the domestic stock insurance company resulting from the conversion of a converting mutual to a stock insurance company under a plan of conversion and an amendment to its articles of incorporation under this section.
- (5) "Member" means a person that, according to the records, articles of incorporation, and bylaws of a converting mutual, is a member of the converting mutual.
- (6) "Membership interests" means:
 - a. The voting rights of members of a domestic mutual insurance company as provided by law and by the company's articles of incorporation and bylaws; and
 - b. The rights of members of a domestic mutual insurance company to receive cash, stock, or other consideration in the event of a conversion to a stock insurance company under this section or a dissolution as provided by the company's articles of incorporation and bylaws.
- (7) "Parent company" means a corporation that, upon the effective date of a conversion, owns all of the stock of the former mutual.
- (8) "Plan of conversion" means the plan of conversion described in subsection (b) of this section.

(b) The plan of conversion under G.S. 58-10-10 shall:

- (1) Describe the manner in which the proposed conversion will occur and the insurance and any other companies that will result from or be directly affected by the conversion, including the former mutual and any parent company.

- (2) Provide that the membership interests in the converting mutual will be extinguished as of the effective date of the conversion.
- (3) Require the distribution to the eligible members, upon the extinguishing of their membership interests, of aggregate consideration equal to the fair value of the converting mutual.
- (4) Describe the manner in which the fair value of the converting mutual has been or will be determined.
- (5) Describe the form or forms and amount, if known, of consideration to be distributed to the eligible members.
- (6) Specify relevant classes, categories, or groups of eligible members and describe and explain any differences in the form or forms and amount of consideration to be distributed to or among the eligible members.
- (7) Require and describe the method or formula for the fair and equitable allocation of the consideration among the eligible members.
- (8) Provide for the determination and preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends, through establishment of a closed block or other method acceptable to the Commissioner.
- (9) Provide that each member and other policyholder of the converting mutual will receive notification of the address and telephone number of the converting mutual and the former mutual, if different, along with the notice of hearing as approved by the Commissioner.
- (10) Include other provisions as the converting mutual determines to be necessary.

(c) After the adoption by the board of directors of the resolution proposing the plan of conversion under G.S. 58-10-10 and the amendment to its articles of incorporation, the converting mutual shall file with the Commissioner an application for approval of the plan and amendment. The application must contain the following information, together with any additional information as the Commissioner may require:

- (1) The plan of conversion and a certificate of the secretary of the converting mutual certifying the adoption of the plan by the board of directors.
- (2) A statement of the reasons for the proposed conversion and why the conversion is in the best interests of the converting mutual, the eligible members, and the other policyholders. The statement must include an analysis of the risks and benefits to the converting mutual and its members of the proposed conversion and a comparison of the risks and benefits of the conversion with the risks and benefits of reasonable alternatives to a conversion.
- (3) A five-year business plan and at least two years of financial forecasts of the former mutual and any parent company.
- (4) Any plans that the former mutual or any parent company may have to:
 - a. Raise additional capital through the issuance of stock or otherwise;

- b. Sell or issue stock to any person, including any compensation or benefit plan for directors, officers, or employees under which stock may be issued;
 - c. Liquidate or dissolve any company or sell any material assets;
 - d. Merge or consolidate or pursue any other form of reorganization with any person; or
 - e. Make any other material change in investment policy, business, corporate structure, or management.
- (5) Any plans for a delayed distribution of consideration to eligible members or restrictions on sale or transfer of stock or other securities.
- (6) A copy of the form of trust agreement, if a distribution of consideration is to be delayed by more than six months after the effective date of the conversion.
- (7) A plan of operation for a closed block, if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends.
- (8) Copies of the amendment to the articles of incorporation proposed by the board of directors and proposed bylaws of the former mutual and copies of the existing and any proposed articles of incorporation and bylaws of any parent company.
- (9) A list of all individuals who are or have been selected to become directors or officers of the former mutual and any parent company, or the individuals who perform or will perform duties customarily performed by a director or officer, and the following information concerning each individual on the list unless the information is already on file with the Commissioner:
 - a. The individual's principal occupation.
 - b. All offices and positions the individual has held in the preceding five years.
 - c. Any crime of which the individual has been convicted (other than traffic violations) in the preceding 10 years.
 - d. Information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven years.
 - e. Information concerning the bankruptcy of any corporation or other entity of which the individual was an officer or director during the previous seven years.
 - f. Information concerning allegations of state or federal securities law violations made against the individual that within the previous 10 years resulted in (i) a determination that the individual violated state or federal securities laws; (ii) a plea of nolo contendere; or (iii) a consent decree.
 - g. Information concerning the suspension, revocation, or other disciplinary action during the previous 10 years of any state or federal license issued to the individual.

- h. Information as to whether the individual was refused a bond during the previous 10 years.
- (10) A fairness opinion addressed to the board of directors of the converting mutual from a qualified, independent financial adviser asserting:
 - a. That the provision of stock, cash, policy benefits, or other forms of consideration upon the extinguishing of the converting mutual's membership interests under the plan of conversion and the amendment to the articles of incorporation is fair to the eligible members, as a group, from a financial point of view; and
 - b. Whether the total consideration under sub-subdivision a. of this subdivision is equal to or greater than the surplus of the converting mutual.

The Commissioner may waive the fairness opinion in situations involving a straightforward issuance of stock to members of the former mutual.

- (11) An actuarial opinion as to the following:
 - a. The reasonableness and appropriateness of the methodology or formulas used to allocate consideration among eligible members, consistent with this Article.
 - b. The reasonableness of the plan of operation and sufficiency of the assets allocated to the closed block, if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends.
- (12) If any of the consideration to be distributed to eligible members consists of stock or other securities, subject to the limitations of G.S. 58-10-10(b)(6), a description of the plans made by the former mutual or its parent company to assure that an active public trading market for the stock or other securities will develop within a reasonable amount of time after the effective date of the plan of conversion and that eligible members who receive stock or other securities will be able to sell their stock or other securities, subject to any delayed distribution or transfer restrictions, at reasonable cost and effort.
- (13) Any additional information, documents, or materials that the converting mutual determines to be necessary.

(d) Distribution of all or part of the consideration to some or all of the eligible members may be delayed, or restrictions on sale or transfer of any stock or other securities to be distributed to eligible members may be required, for a reasonable period of time following the effective date of the conversion. However, the period of time shall not exceed six months unless otherwise approved by the Commissioner.

(e) Except as specifically provided in a plan of conversion, for five years following the effective date of the conversion, no person or persons acting in concert (other than the former mutual, any parent company, or any employee benefit plans or trusts sponsored by the former mutual or a parent company) shall directly or indirectly acquire, or agree or offer to acquire, in any manner the beneficial ownership of five percent (5%) or more of

the outstanding shares of any class of a voting security of the former mutual or any parent company without the prior approval of the Commissioner of a statement filed by that person with the Commissioner. The statement shall contain the information required by G.S. 58-19-15(b) and any other information required by the Commissioner. The Commissioner shall not approve an acquisition under this subsection unless the Commissioner finds that:

- (1) None of the conditions set forth in G.S. 58-19-15(d) will exist.
- (2) The acquisition will not impede the plan of conversion or the amendment to the articles of incorporation as approved by the members and the Commissioner.
- (3) The boards of directors of the former mutual and any parent company have approved the acquisition.
- (4) The acquisition would be in the best interest of the present and future policyholders of the former mutual without regard to any interest of policyholders as shareholders of the former mutual or any parent company. (2001-223, s. 9.6; 2015-146, s. 1.12; 2015-281, s. 13.)

Part 2. Assumption Reinsurance.

§ 58-10-20. Scope.

(a) This Part applies to any licensed insurer that either assumes or transfers the obligations or risks on policies under an assumption reinsurance agreement that is entered into on or after January 1, 1996.

(b) This Part does not apply to:

- (1) Any reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations or risks under the policies subject to the reinsurance agreement.
- (2) The substitution of one insurer for another upon the expiration of insurance coverage under statutory or contractual requirements and the issuance of a new policy by another insurer.
- (3) The transfer of policies under mergers or consolidations of two or more insurers to the extent that those transactions are regulated by statute.
- (4) Except as provided in G.S. 58-10-45, any insurer subject to a judicial order of liquidation or rehabilitation.
- (5) Any reinsurance agreement or transaction to which a state insurance guaranty association is a party, provided that policyholders do not lose any rights or claims afforded under their original policies under Articles 48 or 62 of this Chapter.
- (6) The transfer of liabilities from one insurer to another under a single group policy upon the request of the group policyholder. (1995, c. 318, s. 1; 2004-199, s. 20(b).)

§ 58-10-25. Definitions.

(a) As used in this Part:

- (1) Assuming insurer. – The insurer that acquires an insurance obligation or risk from the transferring insurer under an assumption reinsurance agreement.

- (2) Assumption reinsurance agreement. – Any contract, arrangement, or plan that:
 - a. Transfers insurance obligations or risks of existing or in-force policies from a transferring insurer to an assuming insurer.
 - b. Is intended to effect a novation of transferred policies with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks under the policies are extinguished.
- (3) Home service business. – Insurance business on which premiums are collected on a weekly or monthly basis by an agent of the insurer.
- (4) Policy. – A contract of insurance as defined in G.S. 58-1-10.
- (5) Policyholder. – Any person that has the right to terminate or otherwise alter the terms of a policy. It includes any group policy certificate holder whose certificate is in force on the proposed effective date of the assumption, if the certificate holder has the right to keep the certificate in force without any change in benefits after termination of the group policy. The right to keep the certificate in force referred to in this subdivision does not include the right to elect individual coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), section 601, et seq., of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1161, et seq.
- (6) Transferring insurer. – The insurer that transfers an insurance obligation or risk to an assuming insurer under an assumption reinsurance agreement.

(b) For the purposes of this Part, a "novation" does not require the formation of a new policy or the amendment of an existing policy between the assuming insurer and the policyholder. (1995, c. 318, s. 1; 1995 (Reg. Sess., 1996), c. 752, s. 2.)

§ 58-10-30. Notice requirements.

(a) The transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first-class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent; or with respect to home service business, by personal delivery with acknowledged receipt. A notice of transfer shall also be sent to the transferring insurer's agents or brokers of record on the affected policies.

(b) The notice of transfer shall be in a form identical or substantially similar to Appendix A of the NAIC Assumption Reinsurance Model Act, as amended by the NAIC and shall state or provide:

- (1) The date on which the transfer and novation of the policyholder's policy is proposed to take place.
- (2) The names, addresses, and telephone numbers of the assuming and transferring insurers.
- (3) That the policyholder has the right to either consent to or reject the transfer and novation.
- (4) The procedures and time limit for consenting to or rejecting the transfer and novation.
- (5) A summary of any effect that consenting to or rejecting the transfer and novation will have on the policyholder's rights.

- (6) A statement that the assuming insurer is licensed to write the type of business being assumed in the state where the policyholder resides, or is otherwise authorized, as provided in this Part, to assume that business.
- (7) The name and address of the person at the transferring insurer to whom the policyholder should send the policyholder's written statement of acceptance or rejection of the transfer and novation.
- (8) The address and telephone number of the insurance department where the policyholder resides so that the policyholder may write or call that insurance department for further information about the financial condition of the assuming insurer.
- (9) The following financial data for both insurers:
 - a. Ratings for the last five years, if available, or for any shorter period that is available, from two nationally recognized insurance rating services acceptable to the Commissioner, including the rating services' explanations of the meanings of their ratings. If ratings are unavailable for any year of the five-year period, this shall also be disclosed.
 - b. A balance sheet as of December 31 for the previous three years, if available, or for any shorter period that is available, and as of the date of the most recent quarterly statement.
 - c. A copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement.
 - d. An explanation of the reason for the transfer.

(c) The notice of transfer shall include a preaddressed, postage-paid response card that the policyholder may return as the policyholder's written statement of acceptance or rejection of the transfer and novation.

(d) The notice of transfer shall be filed as part of the prior approval requirement set forth in subsection (e) of this section.

(e) Prior approval by the Commissioner is required for any transaction in which a domestic insurer assumes or transfers obligations or risks on policies under an assumption reinsurance agreement. No insurer licensed in this State shall transfer obligations or risks on policies issued to or owned by residents of this State to any insurer that is not licensed in this State. A domestic insurer shall not assume obligations or risks on policies issued to or owned by policyholders residing in any other state unless it is licensed in the other state, or the insurance regulator of that state has approved the assumption.

(f) Any licensed foreign insurer that enters into an assumption reinsurance agreement that transfers the obligations or risks on policies issued to or owned by residents of this State shall file with the Commissioner the assumption certificate, a copy of the notice of transfer, and an affidavit that the transaction is subject to substantially similar requirements in the states of domicile of both the transferring and assuming insurers. If those requirements do not exist in the state of domicile of either the transferring or assuming insurer, the requirements of subsection (g) of this section apply.

(g) Any licensed foreign insurer that enters into an assumption reinsurance agreement that transfers the obligations or risks on policies issued to or owned by residents of this State shall obtain prior approval of the Commissioner and be subject to all other requirements of this Part with respect to residents of this State, unless the transferring and assuming insurers are subject to assumption reinsurance requirements adopted by statute or administrative rule in the states of their

domicile that are substantially similar to those contained in this Part and in any administrative rules adopted under this Part.

(h) The following factors, along with any other factors the Commissioner deems to be appropriate under the circumstances, shall be considered by the Commissioner in reviewing a request for approval:

- (1) The financial condition of the transferring and assuming insurers and the effect the transaction will have on the financial condition of each company.
- (2) The competence, experience, and integrity of those persons who control the operation of the assuming insurer.
- (3) The plans or proposals the assuming insurer has with respect to the administration of the policies subject to the proposed transfer.
- (4) Whether the transfer is fair and reasonable to the policyholders of both insurers.
- (5) Whether the notice of transfer to be provided by the insurer is fair, adequate, and not misleading. (1995, c. 318, s. 1.)

§ 58-10-35. Policyholder rights.

(a) Policyholders may reject the transfer and novation of their policies by indicating on the response card that the assumption is rejected and returning the card to the transferring insurer.

(b) Payment of any premium to the assuming company during the 24-month period after the notice of transfer has been received indicates the policyholder's acceptance of the transfer to the assuming insurer; and a novation shall occur only if the premium notice clearly states that payment of the premium to the assuming insurer constitutes acceptance of the transfer. The premium notice shall also provide a method for the policyholder to pay the premium while reserving the right to reject the transfer. With respect to any home service business or any other business not using premium notices, the disclosures and procedural requirements of this subsection are to be set forth in the notice of transfer required by G.S. 58-10-30 and in the assumption certificate.

(c) After no fewer than 24 months after the mailing of the initial notice of transfer required under G.S. 58-10-30, if positive consent to, or rejection of, the transfer and assumption has not been received or consent has not been deemed to have occurred under subsection (b) of this section, the transferring insurer shall send to the policyholder a second and final notice of transfer as specified in G.S. 58-10-30. If the policyholder does not accept or reject the transfer during the one-month period immediately after the date on which the transferring insurer mailed the second and final notice of transfer, the policyholder's consent and novation of the contract will occur. With respect to the home service business, or any other business not using premium notices, the 24-month and one-month periods shall be measured from the date of delivery of the notice of transfer under G.S. 58-10-30.

(d) The transferring insurer shall be deemed to have received the response card on the date it is postmarked. A policyholder may also send the response card by facsimile, other electronic transmission, registered mail, express delivery, or courier service; in which case the response card shall be deemed to have been received by the transferring insurer on the date of actual receipt by the transferring insurer. (1995, c. 318, s. 1; 2007-298, s. 7.3; 2007-484, s. 43.5.)

§ 58-10-40. Effect of consent.

If a policyholder consents to the transfer under G.S. 58-10-35 or if the transfer is effected under G.S. 58-10-45, there shall be a novation of the policy, subject to the assumption reinsurance

agreement, with the result that the transferring insurer is thereby relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks. (1995, c. 318, s. 1.)

§ 58-10-45. Commissioner's discretion.

If a domestic insurer or a foreign insurer from a state having a substantially similar law is deemed by its domiciliary insurance regulator to be in hazardous financial condition or a proceeding has been instituted against it for the purpose of reorganizing or conserving the insurer, and the transfer of the policies is in the best interest of the policyholders, as determined by the domiciliary insurance regulator, a transfer and novation may be effected notwithstanding the provisions of this Part. This may include a form of implied consent and adequate notification to the policyholders of the circumstances requiring the transfer as approved by the Commissioner. (1995, c. 318, s. 1.)

Part 3. Disclosure of Material Transactions.

§ 58-10-55. Report.

(a) This Part applies only to domestic insurers. Effective October 1, 1995, every insurer shall file a report with the Commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements, unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the Commissioner for review, approval, or informational purposes under any other provisions of this Chapter or the North Carolina Administrative Code. This report is due within 15 days after the end of the calendar month in which any of these transactions occurred. A copy of the report, including any filed exhibits or other attachments, shall also be filed with the NAIC.

(b) All reports obtained by or disclosed to the Commissioner under this Part are confidential and are not subject to subpoena. No report shall be made public by the Commissioner, the NAIC, or any other person, except to insurance regulators of other states, without the prior written consent of the reporting insurer, unless the Commissioner, after giving the insurer notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication of the report. In that event, the Commissioner may publish all or any part of the report in a manner the Commissioner considers appropriate. (1995, c. 318, s. 1.)

§ 58-10-60. Acquisitions and dispositions of assets.

(a) Insurers do not have to report acquisitions or dispositions under G.S. 58-10-55 if they are not material. For the purposes of this Part, a material acquisition or the aggregate of any series of related acquisitions during any 30-day period, or a material disposition or the aggregate of any series of related dispositions during any 30-day period, is one that is nonrecurring, not in the ordinary course of business, and involves more than five percent (5%) of the insurer's total admitted assets as reported in its most recent financial statement filed with the Department.

(b) Asset acquisitions subject to this Part include every purchase, lease, exchange, merger, consolidation, succession, or other acquisition, other than the construction or development of real property by or for the insurer or the acquisition of materials for that purpose. Asset dispositions subject to this Part include every sale, lease, exchange, merger, consolidation, mortgage,

hypothecation, assignment for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

(c) The following information shall be disclosed in any report under this section:

- (1) Date of the transaction.
- (2) Manner of acquisition or disposition.
- (3) Description of the assets involved.
- (4) Nature and amount of the consideration given or received.
- (5) Purpose of, or reason for, the transaction.
- (6) Manner by which the amount of consideration was determined.
- (7) Gain or loss recognized or realized as a result of the transaction.
- (8) Name of each person from whom the assets were acquired or to whom they were disposed.

(d) Every insurer shall report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer cedes substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus. (1995, c. 318, s. 1.)

§ 58-10-65. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

(a) Insurers do not have to report nonrenewals, cancellations, or revisions of ceded reinsurance agreements under G.S. 58-10-55 if they are not material. For the purposes of this Part, a nonrenewal, cancellation, or revision of a ceded reinsurance agreement is considered material and must be reported if:

- (1) It is for property and casualty business, including accident and health business written by a property and casualty insurer and affects:
 - a. More than fifty percent (50%) of the insurer's total ceded written premium; or
 - b. More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves.
- (2) It is for life, annuity, and accident and health business and affects more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.
- (3) It is for either property and casualty, or life, annuity, and accident and health business, and:
 - a. An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers; or
 - b. Previously established collateral requirements have been reduced or waived with respect to one or more unauthorized reinsurer's representing collectively more than ten percent (10%) of a total cession.

(b) No filing is required if:

- (1) For property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written

premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business.

- (2) For life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement before any cession.
- (c) The following information shall be disclosed in any report under this section:
 - (1) Effective date of the nonrenewal, cancellation, or revision.
 - (2) Description of the transaction, with an identification of the initiator of the transaction.
 - (3) Purpose of, or reason for, the transaction.
 - (4) If applicable, identity of the replacement reinsurers.

(d) Every insurer shall report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer cedes substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to the pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus. (1995, c. 318, s. 1.)

Part 4. Protected Cell Companies.

§ 58-10-75. Purpose and legislative intent.

This Part provides a basis for the creation of protected cells by a domestic insurer as one means of accessing alternative sources of capital and achieving the benefits of insurance securitization. Investors in fully funded insurance securitization transactions provide funds that are available to pay the insurer's insurance obligations or to repay the investors or both. The creation of protected cells is intended to be a means to achieve more efficiencies in conducting insurance securitizations. (2001-223, s. 25.)

§ 58-10-80. Definitions.

As used in this Part, unless the context requires otherwise, the following terms have the following meanings:

- (1) "Domestic insurer" means an insurer domiciled in the State of North Carolina.
- (2) "Fair value" means the amount at which that asset (or liability) could be bought (or incurred) or sold (or settled) in a current transaction between willing parties, that is, other than in a forced or liquidation sale. Quoted marked prices in active markets are the best evidence of fair value and shall be used as the basis for the measurement, if available. If a quoted market price is available, the fair value is the product of the number of trading units times market price. If quoted market prices are not available, the estimate of fair value shall be based on the best information available. The estimate of fair value shall consider prices for similar assets and liabilities and the results of valuation techniques to the extent available in the circumstances. Examples of valuation techniques include the present value of estimated expected future cash flows using a discount rate

commensurate with the risks involved, option-pricing models, matrix pricing, option-adjusted spread models, and fundamental analysis. Valuation techniques for measuring financial assets and liabilities and servicing assets and liabilities shall be consistent with the objective of measuring fair value. Those techniques shall incorporate assumptions that market participants would use in their estimates of values, future revenues, and future expenses, including assumptions about interest rates, default, prepayment, and volatility. In measuring financial liabilities and servicing liabilities at fair value by discounting estimated future cash flows, an objective is to use discount rates at which those liabilities could be settled in an arm's-length transaction. Estimates of expected future cash flows, if used to estimate fair value, shall be the best estimate based on reasonable and supportable assumptions and projections. All available evidence shall be considered in developing estimates of expected future cash flows. The weight given to the evidence shall be commensurate with the extent to which the evidence can be verified objectively. If a range is estimated for either the amount or timing of possible cash flows, the likelihood of possible outcomes shall be considered in determining the best estimate of future cash flows.

- (3) "Fully funded" means that, with respect to any exposure attributed to a protected cell, the market value of the protected cell assets, on the date on which the insurance securitization is effected, equals or exceeds the maximum possible exposure attributable to the protected cell with respect to the exposures.
- (4) "General account" means the assets and liabilities of a protected cell company other than protected cell assets and protected cell liabilities.
- (5) "Indemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered by its incurring a specified level of losses under its insurance or reinsurance contracts.
- (6) "Nonindemnity trigger" means a transaction term by which relief of the issuer's obligation to repay investors is triggered solely by some event or condition other than the individual protected cell company incurring a specified level of losses under its insurance or reinsurance contracts.
- (7) "Protected cell" means an identified pool of assets and liabilities of a protected cell company segregated and insulated by means of this Chapter from the remainder of the protected cell company's assets and liabilities.
- (8) "Protected cell account" means a specifically identified bank or custodial account established by a protected cell company for the purpose of segregating the protected cell assets of one protected cell from the protected cell assets of other protected cells and from the assets of the protected cell company's general account.
- (9) "Protected cell assets" means all assets, contract rights, and general intangibles, identified with and attributable to a specific protected cell of a protected cell company.
- (10) "Protected cell company" means a domestic insurer that has one or more protected cells.
- (11) "Protected cell company insurance securitization" means the issuance of debt instruments, the proceeds from which support the exposures attributed to the

protected cell, by a protected cell company where repayment of principal or interest, or both, to investors under the transaction terms is contingent upon the occurrence or nonoccurrence of an event with respect to which the protected cell company is exposed to loss under insurance or reinsurance contracts it has issued.

- (12) "Protected cell liabilities" means all liabilities and other obligations identified with and attributable to a specific protected cell of a protected cell company. (2001-223, s. 25.)

§ 58-10-85. Establishment of protected cells.

(a) A protected cell company may establish one or more protected cells with the prior written approval of the Commissioner of a plan of operation or amendments submitted by the protected cell company with respect to each protected cell in connection with an insurance securitization. Upon the Commissioner's written approval of the plan of operation, which plan shall include the specific business objectives and investment guidelines of the protected cell, the protected cell company, in accordance with the approved plan of operation, may attribute to the protected cell insurance obligations with respect to its insurance business and obligations relating to the insurance securitization and assets to fund the obligations. A protected cell shall have its own distinct name or designation, which shall include the words "protected cell." The protected cell company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.

(b) All attributions of assets and liabilities between a protected cell and the general account must be in accordance with the plan of operation approved by the Commissioner. A protected cell company may make no other attribution of assets or liabilities between the protected cell company's general account and its protected cells. Any attribution of assets and liabilities between the general account and a protected cell, or from investors in the form of principal on a debt instrument issued by a protected cell company in connection with a protected cell company securitization, must be in cash or in readily marketable securities with established market values.

(c) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell company. Amounts attributed to a protected cell under this Chapter, including assets transferred to a protected cell account, are owned by the protected cell company, and the protected cell company may not be, or may not hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding the provisions of this subsection, the protected cell company may allow for a security interest to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell and otherwise allowed under applicable law.

(d) This Part does not prohibit the protected cell company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, if all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell company's general account.

(e) A protected cell company shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the protected cell company and

the protected cell assets and protected cell liabilities attributable to the protected cells. It shall be the duty of the directors of a protected cell company to keep protected cell assets and protected cell liabilities:

- (1) Separate and separately identifiable from the assets and liabilities of the protected cell company's general account; and
- (2) Attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells. Notwithstanding the provisions of this subsection, if this subsection is violated, the remedy of tracing is applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell company's general account. The remedy of tracing is not an exclusive remedy.

(f) When establishing a protected cell, the protected cell company shall attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell. (2001-223, s. 25.)

§ 58-10-90. Use and operation of protected cells.

(a) The protected cell assets of a protected cell may not be charged with liabilities arising out of any other business the protected cell company may conduct. All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities.

(b) The income, gains and losses, realized or unrealized, from protected cell assets and protected cell liabilities must be credited to or charged against the protected cell without regard to other income, gains or losses of the protected cell company, including income, gains or losses of other protected cells. Amounts attributed to any protected cell and accumulations on the attributed amounts may be invested and reinvested without regard to any requirements or limitations of this Chapter and the investments in a protected cell or cells may not be taken into account in applying the investment limitations otherwise applicable to the investments of the protected cell company.

(c) Assets attributed to a protected cell must be valued at their fair value on the date of valuation.

(d) A protected cell company, with respect to any of its protected cells, shall engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell. A protected cell company insurance securitization that is nonindemnity triggered shall qualify as an insurance securitization under the terms of this Chapter only after the Commissioner adopts rules addressing the methods of funding of the portion of this risk that is not indemnity based and addressing accounting, disclosure, risk-based capital treatment, and assessing risks associated with the securitizations. A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited. Protected cell assets may be used to pay interest or other consideration on any outstanding debt or other obligation attributable to that protected cell, and nothing in this subsection may be construed or interpreted to prevent a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing interest or other consideration.

(e) In all protected cell company insurance securitizations, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction will be attributed. In addition, the contracts or other documentation shall

clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding the provisions of this subsection and subject to the provisions of this Chapter and any other applicable law or rule, the failure to include such language in the contracts or other documentation may not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent the provisions of this Part.

(f) A protected cell company shall only be authorized to attribute to a protected cell account the insurance obligations relating to the protected cell company's general account. Under no circumstances may a protected cell be authorized to issue insurance or reinsurance contracts directly to policyholders or reinsureds or have any obligation to the policyholders or reinsureds of the protected cell company's general account.

(g) At the cessation of business of a protected cell in accordance with the plan approved by the Commissioner, the protected cell company voluntarily shall close out the protected cell account. (2001-223, s. 25.)

§ 58-10-95. Reach of creditors and other claimants.

(a) Protected cell assets shall only be available to the creditors of the protected cell company that are creditors with respect to that protected cell and, accordingly, are entitled, in conformity with this Chapter, to have recourse to the protected cell assets attributable to that protected cell and are absolutely protected from the creditors of the protected cell company that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. Creditors with respect to a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets or the protected cell company's general account. Protected cell assets are only available to creditors of a protected cell company after all protected cell liabilities have been extinguished or otherwise provided for in accordance with the plan of operation relating to that protected cell.

(b) When an obligation of a protected cell company to a person arises from a transaction, or is otherwise imposed, with respect to a protected cell:

- (1) That obligation of the protected cell company extends only to the protected cell assets attributable to that protected cell, and the person, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell; and
- (2) That obligation of the protected cell company does not extend to the protected cell assets of any other protected cell or the assets of the protected cell company's general account, and that person, with respect to that obligation, is not entitled to have recourse to the protected cell assets of any other protected cell or the assets of the protected cell company's general account.

(c) When an obligation of a protected cell company relates solely to the general account, the obligation of the protected cell company extends only to, and that creditor, with respect to that obligation, is entitled to have recourse only to the assets of the protected cell company's general account.

(d) The activities, assets, and obligations relating to a protected cell are not subject to the provisions of Articles 48 and 62 of this Chapter, and neither a protected cell nor a protected cell company may be assessed by, or otherwise be required to contribute to, any guaranty fund or guaranty association in this State with respect to the activities, assets, or obligations of a protected cell. Nothing in this subsection affects the activities or obligations of an insurer's general account.

(e) The establishment of one or more protected cells alone does not constitute a fraudulent conveyance, an intent by the protected cell company to defraud creditors, or the carrying out of business by the protected cell company for any other fraudulent purpose. (2001-223, s. 25.)

§ 58-10-100. Conservation, rehabilitation, or liquidation of protected cell companies.

(a) Notwithstanding any other provision of law or rule, upon an order of conservation, rehabilitation, or liquidation of a protected cell company, the receiver shall deal with the protected cell company's assets and liabilities, including protected cell assets and protected cell liabilities, in accordance with the requirements set forth in this Part.

(b) With respect to amounts recoverable under a protected cell company insurance securitization, the amount recoverable by the receiver may not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to the protected cell company, notwithstanding any provisions to the contrary in the contracts or other documentation governing the protected cell company insurance securitization. (2001-223, s. 25.)

§ 58-10-105. No transaction of an insurance business.

A protected cell company insurance securitization may not be deemed to be an insurance or reinsurance contract. An investor in a protected cell company insurance securitization, by sole means of this investment, may not be deemed to be conducting an insurance business in this State. The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in a protected cell company insurance securitization may not be deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory, or consulting business by virtue of their activities in connection with that business. (2001-223, s. 25.)

§ 58-10-110. Authority to adopt rules.

The Commissioner may adopt rules necessary to effectuate the purposes of this Part. (2001-223, s. 25.)

Part 5. Mortgage Guaranty Insurance.

§ 58-10-120. Definitions.

As used in this Part:

- (1) "Mortgage guaranty insurers report of policyholders position" means the supplementary report required by the Commissioner.
- (2) "Policyholders position" means the contingency reserve established under G.S. 58-10-135 and policyholders' surplus. "Minimum policyholders position" is calculated as described in G.S. 58-10-125.
- (3) "Policyholders surplus" means an insurer's net worth; the difference between its assets and liabilities, as reported in its annual statement. (2001-223, s. 11; 2005-215, s. 11.)

§ 58-10-125. Policyholders position and capital and surplus requirements.

(a) For the purpose of complying with G.S. 58-7-75, a mortgage guaranty insurer shall maintain at all times a minimum policyholders position of not less than one

twenty-fifth of the insurer's aggregate insured risk outstanding. The policyholders position shall be net of reinsurance ceded but shall include reinsurance assumed.

(b) Subject to the provisions of subsections (i) through (l) of this section, if a mortgage guaranty insurer does not have the minimum amount of policyholders position required by this section it shall cease transacting new business until the time that its policyholders position is in compliance with this section.

(c) A mortgage guaranty insurer shall at all times maintain capital and surplus in the greater of the amount required by G.S. 58-7-75 or subsection (a) of this section, unless a waiver is obtained by the mortgage guaranty insurer pursuant to subsection (i) of this section.

(d) through (h) Repealed by Session Laws 2007-127, s. 5, effective July 1, 2007.

(i) The Commissioner may waive the requirement found in subsection (a) of this section at the written request of a mortgage guaranty insurer upon a finding that the mortgage guaranty insurer's policyholders position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured risk and adequate to its financial needs. The request must be made in writing at least 90 days in advance of the date that the mortgage guaranty insurer expects to exceed the requirement of subsection (a) of this section and shall, at a minimum, address the factors specified in subsection (j) of this section.

(j) In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured risk and adequate to its financial needs, all of the following factors, among others, shall be considered:

- (1) The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
- (2) The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.
- (3) The nature and extent of the mortgage guaranty insurer's reinsurance program.
- (4) The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.
- (5) The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.
- (6) The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.
- (7) The adequacy of the mortgage guaranty insurer's reserves.
- (8) The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.
- (9) The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.

- (10) An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.
- (11) The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.
- (12) The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.

(k) The Commissioner may retain accountants, actuaries, or other experts to assist the Commissioner in the review of the mortgage guaranty insurer's request submitted pursuant to subsection (i) of this section. The mortgage guaranty insurer shall bear the Commissioner's cost of retaining those persons.

(l) Any waiver shall be (i) for a specified period of time not to exceed two years and (ii) subject to any terms and conditions that the Commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by subsection (a) of this section. (2001-223, s. 11; 2007-127, s. 5; 2009-254, s. 1; 2010-40, ss. 1, 2; 2013-199, s. 3(a), (b).)

§ 58-10-130. Unearned premium reserve.

- (a) The unearned premium reserve shall be computed as follows:
 - (1) The unearned premium reserve for premiums paid in advance annually shall be calculated on the monthly pro rata fractional basis.
 - (2) Premiums paid in advance for 10-year coverage shall be placed in the unearned premium reserve and shall be released from this reserve as follows:
 - a. 1st month – 1/132;
 - b. 2nd through 12th month – 2/132 each month;
 - c. 13th month – 3/264;
 - d. 14th through 120th month – 1/132 per month;
 - e. 121st month – 1/264
 - (3) Premiums paid in advance for periods in excess of 10 years. During the first 10 years of coverage the unearned portion of the premium shall be the premium collected minus an amount equal to the premium that would have been earned had the applicable premium for 10 years of coverage been received. The premium remaining after 10 years shall be released from the unearned premium reserve monthly pro rata over the remaining term of coverage.
- (b) Repealed by Session Laws 2001-334, s. 16.1.
- (c) The case basis method shall be used to determine the loss reserve which shall include a reserve for claims reported and unpaid and a reserve for claims incurred but not reported. (2001-223, s. 11; 2001-334, s. 16.1.)

§ 58-10-135. Contingency reserve for mortgage guaranty insurers.

(a) Subject to G.S. 58-7-21, a mortgage guaranty insurer shall make an annual contribution to the contingency reserve which in the aggregate shall be fifty percent (50%) of the net earned mortgage guaranty premium reported in the annual statement.

(b) Repealed by Session Laws 2007-127, s. 6, effective July 1, 2007.

(c) The contingency reserve established by this section shall be maintained for 120 months and reported in the financial statements as a liability. That portion of the contingency reserve established and maintained for more than 120 months shall be released and shall no longer constitute part of the contingency reserve.

(d) With the approval of the Commissioner, withdrawals may be made from the contingency reserve when incurred losses and incurred loss expenses exceed thirty-five percent (35%) of the net earned premium. On a quarterly basis, provisional withdrawals may be made from the contingency reserve in an amount not to exceed seventy-five percent (75%) of the withdrawal calculated in accordance with this subsection.

(e) With the approval of the Commissioner, a mortgage guaranty insurer may withdraw from the contingency reserve any amounts which are in excess of the minimum policyholders position as filed with the most recently filed annual statement. In reviewing a request for withdrawal pursuant to this subsection, the Commissioner may consider loss development and trends. If any portion of the contingency reserve for which withdrawal is requested pursuant to this subsection is maintained by a reinsurer, the Commissioner may also consider the financial condition of the reinsurer. If any portion of the contingency reserve for which withdrawal is requested pursuant to this subsection is maintained in a segregated account or segregated trust and such withdrawal would result in funds being removed from the segregated account or segregated trust, the Commissioner may also consider the financial condition of the reinsurer.

(f) Releases and withdrawals from the contingency reserve shall be accounted for on a first-in-first-out basis as prescribed by the Commissioner.

(g) The calculations to develop the contingency reserve shall be made in the following sequence:

- (1) The additions required by subsection (a) of this section;
- (2) The releases permitted by subsection (c) of this section;
- (3) The withdrawals permitted by subsection (d) of this section; and
- (4) The withdrawals permitted by subsection (e) of this section.

(h) Whenever the laws or regulations of another jurisdiction in which a mortgage guaranty insurer, subject to the requirements of this Part is licensed, require a larger unearned premium reserve or a larger contingency reserve in the aggregate than that set forth in this Part, the establishment and maintenance of the larger unearned premium reserve or contingency reserve shall be deemed to be in compliance with this Part. (2001-223, s. 11; 2001-334, ss. 16.2, 16.3; 2007-127, s. 6.)

§ 58-10-140. Report of policyholder's position.

Each mortgage guaranty insurance company doing business in this State must file on a form prescribed by the Commissioner a Mortgage Guaranty Insurers Report of Policyholders Position. The supplemental reports shall be filed with the annual and quarterly statements pursuant to G.S. 58-2-165. (2005-215, s. 12.)

§ 58-10-145. Monoline requirement for mortgage guaranty insurers.

A mortgage guaranty insurance company that transacts any kind of insurance other than mortgage guaranty insurance is not eligible to transact business in this State. Provided, however, that a mortgage guaranty insurance company may, until December 31, 2012, assume reinsurance for "credit insurance," as defined in G.S. 58-7-15(17). (2007-127, s. 7; 2008-124, s. 2.2.)

Part 6. Property and Casualty Actuarial Opinions.

§ 58-10-150. Statement of actuarial opinion.

Every property and casualty insurance company doing business in this State, unless otherwise exempted by the Commissioner, shall annually submit the opinion of an appointed actuary entitled, "statement of actuarial opinion." This opinion shall be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions. (2007-127, s. 15.)

§ 58-10-155. Actuarial opinion summary.

(a) Every property and casualty insurance company domiciled in this State that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the statement of actuarial opinion required in G.S. 58-10-150.

(b) A company licensed but not domiciled in this State, and a company writing business in this State although not specifically licensed to do so or otherwise authorized, shall provide the actuarial opinion summary upon request. (2007-127, s. 15.)

§ 58-10-160. Actuarial report and work papers.

(a) An actuarial report and underlying work papers as required by the appropriate NAIC Property and Casualty Annual Statement Instructions shall be prepared to support each statement of actuarial opinion and actuarial opinion summary.

(b) If an insurance company fails to provide a supporting actuarial report or work papers at the request of the Commissioner or if the Commissioner determines that the supporting actuarial report or work papers provided by an insurance company are unsatisfactory to the Commissioner, the Commissioner may engage an independent, qualified actuary at the expense of the company to (i) review the opinion and the basis for the opinion and (ii) prepare an actuarial report or work papers. (2007-127, s. 15.)

§ 58-10-165. Monetary penalties for failure to provide documents.

A company that fails to provide a statement of actuarial opinion, actuarial opinion summary, actuarial report, or work papers within the time frame provided in the Commissioner's written request, is subject to the monetary penalties set forth in G.S. 58-2-70. (2007-127, s. 15.)

§ 58-10-170. Qualified immunity of appointed actuary.

The appointed actuary shall not be liable for damages to any person other than the insurance company or the Commissioner for any act, error, omission, decision, or conduct with respect to the appointed actuary's opinion, except in cases of fraud or willful misconduct by the appointed actuary. (2007-127, s. 15.)

§ 58-10-175. Confidentiality.

(a) The statement of actuarial opinion shall be treated as a public record.

(b) Documents, materials, or other information in the possession or control of the Department that are considered an actuarial opinion summary, actuarial report, or work papers provided in support of the opinion, and any other material provided by the company to the Commissioner in connection with the actuarial opinion summary, actuarial report, or work papers

shall be confidential by law and privileged, in accord with G.S. 58-2-240, shall not be subject to G.S. 58-2-100, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

(c) Subsection (b) of this section shall not be construed to limit the Commissioner's authority to release documents to the Actuarial Board for Counseling and Discipline if the documents are required for the purpose of professional disciplinary proceedings and if the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the Commissioner for preserving the confidentiality of the documents. In addition, this section shall not be construed to limit the Commissioner's authority to use any documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(d) Neither the Commissioner nor any person who received documents, materials, or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (b) of this section.

(e) In order to assist in the performance of the Commissioner's duties, the Commissioner:

- (1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (b) of this section with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality.
- (2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.
- (3) May enter into agreements governing the sharing and use of information consistent with this section.

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (e) of this section. (2007-127, s. 15.)

Part 7. Annual Financial Reporting.

§ 58-10-185. Purpose and scope.

(a) The purpose of this Part is to improve the Commissioner's ability to monitor the financial condition of insurers by requiring (i) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants, (ii) communication of internal control related matters noted in an audit, and (iii) management's report of internal control over financial reporting.

(b) Every insurer, as defined in G.S. 58-10-190, shall be subject to this Part. Insurers having direct premiums written in this State of less than one million dollars (\$1,000,000) in any calendar year and fewer than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from this Part for the year, unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities, except that insurers having assumed premiums pursuant to contracts of reinsurance of one million dollars (\$1,000,000) or more will not be exempt.

(c) Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for filing of audited financial reports, which has been found by the Commissioner to be substantially similar to the requirements in this Part, are exempt from G.S. 58-10-195 through G.S. 58-10-240 if:

- (1) A copy of the audited financial report, communication of internal control related matters noted in an audit, and the accountant's letter of qualifications that are filed with the other state are filed with the Commissioner in accordance with the filing dates specified in G.S. 58-10-195, 58-10-230, and 58-10-235, respectively. Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada.
- (2) A copy of any notification of adverse financial condition report filed with the other state is filed with the Commissioner within the time specified in G.S. 58-10-225.

(d) Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this State provided the other state has substantially similar reporting requirements and the report is filed with the Commissioner of the other state within the time specified.

(e) This Part shall not prohibit, preclude, or in any way limit the Commissioner from ordering, conducting, or performing examinations of insurers in accordance with G.S. 58-2-131 through G.S. 58-2-134, known as the Examination Law. (2009-384, s. 1.)

§ 58-10-190. Definitions.

As used in this Part:

- (1) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.
- (2) An "affiliate" of, or person "affiliated" with, a specific person has the same meaning set forth in G.S. 58-19-5.
- (3) "Audit committee" means a committee, or equivalent body, established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers at the election of the controlling person as provided in G.S. 58-10-245(f). If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

- (4) "Audited financial report" means and includes those items specified in G.S. 58-10-200.
- (5) "Controlling person" has the same meaning set forth in G.S. 58-19-5.
- (6) "Group of insurers" means those licensed insurers included in the reporting requirements of Article 19 of this Chapter, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.
- (7) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting from other known misrepresentations made by the insurer or its representatives.
- (8) "Insurer" means any insurance entity as identified in Articles 7, 8, 11, 15, 17, 23, 24, 25, 26, 65, and 67 of this Chapter and regulated by the Commissioner.
- (9) "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, that is, those items specified in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) and includes those policies and procedures that meet all of the following criteria:
 - a. Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets.
 - b. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, that is, those items specified in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) and that receipts and expenditures are being made only in accordance with authorizations of management and directors.
 - c. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements, including those items specified in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6).
- (10) "SEC" means the United States Securities and Exchange Commission, or any successor agency.
- (11) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated under that act.
- (12) "Section 404 report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in Section 3A of the Sarbanes-Oxley Act of 2002.
- (13) "SOX-compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) Section 202. Preapproval requirements of Title II, Auditor Independence; (ii) Section 301. Audit Committees independence requirements of Title III, Corporate Responsibility; and (iii) Section 404. Management assessment of internal controls requirements of Title IV, Enhanced Financial Disclosures. (2009-384, s. 1.)

§ 58-10-195. General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment.

(a) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with 90 days' advance notice to the insurer.

(b) Extensions of the June 1 filing date may be granted by the Commissioner for 30-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the Commissioner of good cause for an extension. The request for extension must be received in writing not less than 10 days before the due date and in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

(c) If an extension is granted in accordance with the provisions in subsection (b) of this section, a similar extension of 30 days is granted to the filing of management's report of internal control over financial reporting.

(d) Every insurer required to file an annual audited financial report pursuant to this Part shall designate a group of individuals as constituting its audit committee, as defined in G.S. 58-10-190. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee at the election of the controlling person. (2009-384, s. 1.)

§ 58-10-200. Contents of annual audited financial report.

(a) The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with G.S. 58-2-165(c). The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

(b) The annual audited financial report shall include the following:

- (1) Report of independent certified public accountant.
- (2) Balance sheet reporting admitted assets, liabilities, capital, and surplus.
- (3) Statement of operations.
- (4) Statement of cash flows.
- (5) Statement of changes in capital and surplus.
- (6) Notes to financial statements, which shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to G.S. 58-2-165(c) with a written description of the nature of these differences. (2009-384, s. 1.)

§ 58-10-205. Designation of independent certified public accountant.

(a) Each insurer required by this Part to file an annual audited financial report must, within 60 days after becoming subject to the requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit. Insurers not retaining an independent certified public accountant on July 31, 2009, shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

(b) The insurer shall obtain a letter from the accountant and file a copy with the Commissioner stating that the accountant is aware of the provisions of the insurance laws and the regulations of the State of North Carolina that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statement in terms of its conformity to the statutory accounting practices prescribed or otherwise permitted by the Commissioner, specifying such exceptions as he or she may believe appropriate.

(c) If an accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the Commissioner of this event. The insurer shall also furnish the Commissioner with a separate letter within 10 business days after the notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section could include, but are not limited to, disagreements between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the Commissioner together with its own. (2009-384, s. 1.)

§ 58-10-210. Qualifications of independent certified public accountant.

(a) The Commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

- (1) Is not in good standing with the North Carolina State Board of Certified Public Accountant Examiners and in all other states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
- (2) Has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.

(b) Except as otherwise provided in this Part, the Commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners or similar code.

(c) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Article 30 of this Chapter, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(d) Lead Audit Partner Rotation Required.

(1) The lead or coordinating audit partner, having primary responsibility for the audit, may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may apply to the Commissioner for relief from the rotation requirement on the basis of unusual circumstances. This application shall be made at least 30 days before the end of the calendar year. The Commissioner may consider any of the following factors in determining if the relief should be granted:

- a. The number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm.
- b. The premium volume of the insurer.
- c. The number of jurisdictions in which the insurer transacts business.

(2) The insurer shall file, with its annual statement filing, the approval for relief granted pursuant to subdivision (1) of this subsection with the states in which it is licensed or doing business and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format.

(e) The Commissioner shall neither recognize as a qualified independent certified public accountant, nor accept an annual audited financial report prepared, in whole or in part, by a natural person who meets any of the following criteria:

- (1) The person has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 to 1968k, or any dishonest conduct or practices under federal or state law.
- (2) The person has been found to have violated the insurance laws of this State with respect to any previous reports submitted under this Part.
- (3) The person has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this Part.

(f) The Commissioner may, as provided in G.S. 58-2-50, hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this Part and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this Part.

(g) Independence of Services.

(1) The Commissioner shall not recognize as a qualified independent certified public accountant nor accept an annual audited financial report prepared, in whole or in part, by an accountant who provides to an insurer, contemporaneously with the audit, any of the following nonaudit services:

- a. Bookkeeping or other services related to the accounting records or financial statements of the insurer.
 - b. Financial information systems design and implementation.
 - c. Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.
 - d. Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions, and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on an insurer's reserves if all of the following conditions have been met:
 - 1. Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions.
 - 2. The insurer has competent personnel, or engages a third-party actuary to estimate the reserves for which management takes responsibility.
 - 3. The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves.
 - e. Internal audit outsourcing services.
 - f. Management functions or human resources.
 - g. Broker or dealer, investment adviser, or investment banking services.
 - h. Legal services or expert services unrelated to the audit.
 - i. Any other services that the Commissioner determines, by administrative rule, are impermissible.
- (2) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.
- (h) Insurers having direct written and assumed premiums of less than one hundred million dollars (\$100,000,000) in any calendar year may request an exemption from subdivision (1) of subsection (g) of this section. The insurer shall file with the Commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the Commissioner finds, upon review of this statement, that compliance with this Part would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.
- (i) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subdivision (1) of subsection (g) of this section or that do not conflict with the principles set forth in subdivision (2) of subsection (g) of this section, only if the activity is approved in advance by the audit committee, in accordance with subsection (j) of this section.

(j) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX-compliant entity or is a direct or indirect wholly owned subsidiary of a SOX-compliant entity or all of the following apply:

- (1) The aggregate amount of all such nonaudit services provided to the insurer constitutes not more than five percent (5%) of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided.
- (2) The services were not recognized by the insurer at the time of the engagement to be nonaudit services.
- (3) The services are promptly brought to the attention of the audit committee and approved before the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

(k) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection (j) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(l) Cooling-Off Period.

- (1) The Commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may apply to the Commissioner for relief from this requirement on the basis of unusual circumstances.
- (2) The insurer shall file, with its annual statement filing, the approval for relief granted pursuant to subdivision (1) of this subsection with the states in which it is licensed or doing business and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format. (2009-384, s. 1.)

§ 58-10-215. Consolidated or combined audits.

An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent (100%) reinsurance agreement that affects the solvency of the insurer and affects the integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet that meets all of the following criteria shall be filed with the report:

- (1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.
- (2) Amounts for each insurer subject to this section shall be stated separately.
- (3) Noninsurance operations may be shown on the worksheet on a combined or individual basis.
- (4) Explanations of consolidating and eliminating entries shall be included.
- (5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers. (2009-384, s. 1.)

§ 58-10-220. Scope of audit and report of independent certified public accountant.

Financial statements furnished pursuant to G.S. 58-10-200 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU Section 319, for those insurers required to file a management's report of internal control over financial reporting pursuant to G.S. 58-10-255, the independent certified public accountant should consider, as that term is defined in "Statement on Auditing Standards No. 102 of the AICPA Professional Standards, Defining Professional Requirements in Statements on Auditing Standards" or its replacement, the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the NAIC as the independent certified public accountant deems necessary. (2009-384, s. 1.)

§ 58-10-225. Notification of adverse financial condition.

(a) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of G.S. 58-7-75 as of that date. An insurer that has received a report pursuant to this subsection shall forward a copy of the report to the Commissioner within five business days after receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If the independent certified public accountant fails to receive the evidence within the required five-business-day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five business days.

(b) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with subsection (a) of this section if the statement is made in good faith in compliance with that subsection.

(c) If the accountant, subsequent to the date of the audited financial report filed pursuant to this Part, becomes aware of facts that might have affected his or her report, the Commissioner notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA. (2009-384, s. 1.)

§ 58-10-230. Communication of internal control related matters noted in an audit.

(a) In addition to the annual audited financial report, each insurer shall furnish the Commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report and shall contain a description of any unremediated material weakness, as the term "material weakness" is defined by "Statement on Auditing Standards No. 112 of the AICPA Professional Standards, Communication of Internal Control Related Matters Noted in an Audit," or its replacement, as of December 31 immediately preceding, so as to coincide with the audited financial report described in G.S. 58-10-195(a) in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses are noted, the communication should so state.

(b) The insurer shall provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication. (2009-384, s. 1.)

§ 58-10-235. Accountant's letter of qualifications.

The accountant shall furnish the insurer, in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating all of the following:

- (1) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners Board of Public Accountancy, or similar code.
- (2) The background and experience in general and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this Part shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where their use is consistent with the standards prescribed by generally accepted auditing standards.
- (3) That the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with this Part and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.
- (4) That the accountant consents to the requirements of G.S. 58-10-240 and that the accountant consents and agrees to make available for review by the Commissioner, or the Commissioner's designee or appointed agent, the work papers, as described in G.S. 58-10-240.
- (5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA.
- (6) A representation that the accountant is in compliance with the requirements of G.S. 58-10-210. (2009-384, s. 1.)

§ 58-10-240. Definition, availability, and maintenance of independent certified public accountants' work papers.

(a) Work papers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Work papers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

(b) Every insurer required to file an audited financial report pursuant to this Part shall require the accountant to make available for review by the Commissioner all work papers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer at the offices of the insurer, at the offices of the Commissioner, or at any other reasonable place designated by the Commissioner. The insurer shall require that the accountant retain the audit work papers and communications until the Commissioner has filed a report on examination covering the period of the audit but no longer than seven years after the date of the audit report.

(c) In the conduct of the periodic review by the Commissioner's examiners in subsection (b) of this section, copies of pertinent audit work papers may be made and retained by the Commissioner. Such reviews by the Commissioner's examiners shall be considered investigations, and all working papers and communications obtained during the course of such investigations shall be confidential. (2009-384, s. 1.)

§ 58-10-245. Requirements for audit committees.

(a) This section shall not apply to foreign or alien insurers licensed in this State or an insurer that is a SOX-compliant entity or a direct or indirect wholly owned subsidiary of a SOX-compliant entity.

(b) The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work. Each accountant shall report directly to the audit committee.

(c) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (f) of this section and G.S. 58-10-190(3).

(d) In order to be considered independent for purposes of this section, a member of the audit committee shall not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary of the entity. However, if North Carolina law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(e) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the Commissioner, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(f) To exercise the election of the controlling person to designate the audit committee, the ultimate controlling person shall provide written notice of the affected insurers to the Commissioner. Notification shall be made timely before the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the Commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(g) Reports From Accountant.

(1) The audit committee shall require the accountant that performs for an insurer any audit required by this Part to timely report to the audit committee in accordance with the requirements of "Statement on Auditing Standards No. 61 of the AICPA Professional Standards, Communication with Audit Committees," or its replacement, including all of the following:

- a. All significant accounting policies and material permitted practices.
- b. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant.
- c. Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(2) If an insurer is a member of an insurance holding company system, the reports required by subdivision (1) of subsection (g) of this section may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(h) The proportion of independent audit committee members shall meet or exceed the following criteria:

<u>Prior Calendar Year Direct Written and Assumed Premiums</u>		
<u>\$0 – \$300,000,000</u>	<u>Over \$300,000,000 – \$500,000,000</u>	<u>Over \$500,000,000</u>
No minimum requirements.	Majority (50% or more) of members shall be independent.	Supermajority of members (75% or more) shall be independent.

The Commissioner shall require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a risk-based capital action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer. The Commissioner may order any insurer with less than five hundred million dollars (\$500,000,000) in prior year direct written and assumed premiums to structure its audit committee with at least a supermajority of independent audit committee members. Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(i) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than five hundred million dollars (\$500,000,000) may apply to the Commissioner for a waiver from the requirements

in this section based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states in which it is licensed or doing business and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format. (2009-384, s. 1.)

§ 58-10-250. Conduct of insurer in connection with the preparation of required reports and documents.

- (a) No director or officer of an insurer shall, directly or indirectly, do any of the following:
 - (1) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review, or communication required under this Part.
 - (2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under this Part.

(b) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead, or fraudulently influence any accountant engaged in the performance of an audit pursuant to this Part if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(c) For purposes of subsection (b) of this section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at anytime with respect to the professional engagement period to coerce, manipulate, mislead, or fraudulently influence an accountant to do any of the following:

- (1) Issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances, due to material violations of statutory accounting principles prescribed by the Commissioner, generally accepted auditing standards, or other professional or regulatory standards.
- (2) Not perform audit, review, or other procedures required by generally accepted auditing standards or other professional standards.
- (3) Not withdraw an issued report.
- (4) Not communicate matters to an insurer's audit committee. (2009-384, s. 1.)

§ 58-10-255. Management's report of internal control over financial reporting.

(a) Every insurer required to file an audited financial report pursuant to this Part that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of five hundred million dollars (\$500,000,000) or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in G.S. 58-10-190. The report shall be filed with the Commissioner along with the communication of internal control related matters noted in an audit described under G.S. 58-10-230. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(b) Notwithstanding the premium threshold in subsection (a) of this section, the Commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any risk-based capital level event, or meets any one or more of the

standards of an insurer deemed to be in hazardous financial condition as defined in G.S. 58-30-60(b).

(c) An insurer or a group of insurers that is:

- (1) Directly subject to Section 404;
- (2) Part of a holding company system whose parent is directly subject to Section 404;
- (3) Not directly subject to Section 404 but is a SOX-compliant entity; or
- (4) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX-compliant entity may file its or its parent's Section 404 report and an addendum in satisfaction of this subsection's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements for items included in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) were included in the scope of the Section 404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements for items included in G.S. 58-10-200(b)(2) through G.S. 58-10-200(b)(6) that were excluded from the Section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 report, the insurer or group of insurers may either file (i) a G.S. 58-10-255 report, or (ii) the Section 404 report and a G.S. 58-10-255 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 report.

(d) Management's report of internal control over financial reporting shall include all of the following:

- (1) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting.
- (2) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles.
- (3) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting.
- (4) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded.
- (5) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting

principles if there are one or more unremediated material weaknesses in its internal control over financial reporting.

- (6) A statement regarding the inherent limitations of internal control systems.
- (7) Signatures of the chief executive officer and the chief financial officer, or equivalent position.

(e) Management shall document and make available upon a financial condition examination the basis upon which its assertions, required in subsection (d) of this section, are made. Management may base its assertions, in part, upon its review, monitoring, and testing of internal controls undertaken in the normal course of its activities. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation. Management's report on internal control over financial reporting, required by subsection (a) of this section, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the Commissioner. (2009-384, s. 1.)

§ 58-10-260. Exemptions and effective dates.

(a) Upon written application of any insurer, the Commissioner may grant an exemption from compliance with any and all provisions of this Part if the Commissioner finds, upon review of the application, that compliance with this Part would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at anytime and from time to time for a specified period or periods. Within 10 days after a denial of an insurer's written request for an exemption, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with Article 3A of Chapter 150B of the General Statutes.

(b) Domestic insurers retaining a certified public accountant on July 31, 2009, who qualify as independent shall comply with this Part for the year ending December 31, 2010, and each year thereafter unless the Commissioner permits otherwise.

(c) Foreign insurers shall comply with this Part for the year ending December 31, 2010, and each year thereafter unless the Commissioner permits otherwise.

(d) The requirements of G.S. 58-10-210(d) shall become effective for audits of the year beginning January 1, 2010, and each year thereafter.

(e) The requirements of G.S. 58-10-245 shall become effective on January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

(f) The requirements of G.S. 58-10-255 become effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file a report. An insurer

acquired in a business combination shall have two calendar years after the date of acquisition or combination to comply with the reporting requirements. (2009-384, s. 1.)

§ 58-10-265. Canadian and British companies.

(a) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

(b) For such insurers, the letter required in G.S. 58-10-205(b) shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner pursuant to G.S. 58-10-195 and shall affirm that the opinion expressed is in conformity with those requirements. (2009-384, s. 1.)

Part 8. Mutual Insurance Holding Companies.

§ 58-10-275. Definitions.

The following definitions apply in this Part:

- (1) Affiliated. – Defined in G.S. 58-19-5.
- (2) Control. – Defined in G.S. 58-19-5.
- (3) Domestic mutual insurance company. – An insurance company organized on a mutual plan and incorporated under the laws of North Carolina.
- (4) Interested person. – With respect to another person, includes any of the following:
 - a. Any affiliated person.
 - b. Any member of the immediate family of any natural person who is an affiliated person of such company.
 - c. Any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company.
 - d. Any natural person whom the Commissioner by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company.
- (5) Intermediate holding company. – A holding company that is a subsidiary of a mutual insurance holding company or part of a holding company system controlled by a mutual insurance holding company subject to the terms and conditions of Article 19 of this Chapter and that either directly or through a subsidiary intermediate holding company has one or more subsidiary reorganized insurance companies of which a majority of the voting shares of the capital stock would otherwise have been required by this section to be at all times owned by the mutual insurance holding company.
- (6) Limited application. – An application by a domestic mutual insurance company for reorganization to a mutual insurance holding company

which will hold, at all times, one hundred percent (100%) of the stock of its insurance subsidiaries.

- (7) Majority of the voting shares of the capital stock of the reorganized insurance company. – Shares of the capital stock of a reorganized insurance company which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurance company for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurance company.
- (8) Member of the immediate family. – Any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, including step and adoptive relationships.
- (9) Mutual insurance holding company. – A holding company organized on a mutual plan and incorporated under the laws of North Carolina, resulting from the reorganization of a domestic mutual insurance company pursuant to this Part, with one or more stock insurance holding company subsidiaries or stock insurance company subsidiaries.
- (10) Plan of reorganization. – A plan to reorganize a domestic mutual insurance company by forming a mutual insurance holding company.
- (11) Standard application. – An application by a domestic mutual insurance company for reorganization to a mutual insurance holding company which may sell interests in its subsidiaries to third parties.
- (12) Stock. – Any security evidencing an equity interest in the issuing entity.
- (13) Stock offering. – Any proposed sale, exchange, transfer, or other change of ownership of stock or of securities convertible into or exchangeable or exercisable for stock. For the purposes of this Article, "stock offering" shall not include any of the following:
 - a. An offering of preferred stock which is not convertible or exchangeable into common stock and which has no ordinary voting rights.
 - b. A transfer of stock among any of the following:
 - 1. A mutual insurance holding company.
 - 2. An insurance company subsidiary of a mutual insurance holding company.
 - 3. An intermediate holding company subsidiary of a mutual insurance holding company.
 - 4. An insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company.
- (14) Subsidiary. – Defined in G.S. 58-19-5. (2012-161, s. 1.)

§ 58-10-280. General provisions.

(a) A domestic mutual insurance company, upon approval of the Commissioner, may reorganize by forming an insurance holding company based upon a mutual plan and

by continuing the corporate existence of the reorganizing insurance company as a stock insurance company. If the Commissioner, after a public comment period as provided in G.S. 58-10-285, or, if applicable, a public hearing, is satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, the Commissioner may approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in G.S. 58-10-285 to assist in the review of the proposed plan. The Commissioner shall retain jurisdiction over a mutual insurance holding company organized under this Part to assure that policyholder interests are protected. All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company, pursuant to the terms and conditions of the plan of reorganization approved by the Commissioner. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.

(b) A domestic mutual insurance company, after approval by the Commissioner, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed under subsection (a) of this section and continuing the corporate existence of the reorganizing insurance company as a stock insurance company subsidiary of the mutual insurance holding company. If the Commissioner is satisfied that the interests of the policyholders are properly protected and that the merger of interests is fair and equitable to the policyholders, the Commissioner may approve the proposed merger of interests and may require as a condition of approval such modifications of the proposed merger of interests as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in G.S. 58-10-285. The Commissioner has jurisdiction over the mutual insurance holding company organized under this Part to assure that policyholder interests are protected. All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall, pursuant to the terms and conditions of the plan of reorganization approved by the Commissioner, become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with subsection (a) of this section and the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.

(c) A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company that was organized under Articles 7 and 8 and other

applicable provisions of this Chapter shall be incorporated under this Chapter. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the Commissioner in the same manner as those of a mutual insurance company.

(d) A mutual insurance holding company is an insurer subject to Article 30 of this Chapter and shall automatically be a party to any proceeding under Article 30 of this Chapter involving an insurance company which, as a result of a reorganization under subsection (a) or (b) of this section, is a subsidiary of the mutual insurance holding company. In any proceeding under Article 30 of this Chapter involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the reorganized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the Commissioner or as ordered by the court pursuant to Article 30 of this Chapter.

(e) G.S. 58-10-10 and G.S. 58-10-12 are not applicable to a reorganization or merger of interests under this Part. G.S. 58-10-10 and G.S. 58-10-12 are applicable to demutualization of a mutual insurance holding company that resulted from the reorganization of a domestic mutual insurance company organized under this Chapter as if the mutual insurance holding company was a mutual insurance company.

(f) A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in Chapter 78A of the General Statutes.

(g) The majority of the voting shares of the capital stock of the reorganized insurance company, which is required by this section to be at all times owned by a mutual insurance holding company, shall not be conveyed, transferred, assigned, pledged, subjected to a security interest or lien, encumbered, or otherwise hypothecated or alienated by the mutual insurance holding company or intermediate holding company. Any conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation of, in, or on the majority of the voting shares of the reorganized insurance company is a violation of this section and shall be void in inverse chronological order of the date of such conveyance, transfer, assignment, pledge, security interest, lien, encumbrance, or hypothecation or alienation, as to the shares necessary to constitute a majority of such voting shares. The majority of the voting shares of the capital stock of the reorganized insurance company shall not be subject to execution and levy as provided in Chapter 1 of the General Statutes. The shares of the capital stock of the surviving or new company resulting from a merger or consolidation of two or more reorganized insurance companies or two or more intermediate holding companies that were subsidiaries of the same mutual insurance holding company are subject to the same requirements, restrictions, and limitations to which the shares of the merging or consolidating reorganized insurance companies or intermediate holding companies were subject by this section prior to the merger or consolidation. The ownership of a majority of the voting shares of the capital stock of the reorganized insurance company that are required by this section to be at all times owned by a parent mutual insurance holding company includes indirect ownership through one or more intermediate holding companies in a corporate structure approved by

the Commissioner. However, indirect ownership through one or more intermediate holding companies shall not result in the mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurance company. The Commissioner shall have jurisdiction over an intermediate holding company as if it were a mutual insurance holding company.

(h) The applicant's articles of incorporation or bylaws, as appropriate, shall require a policyholder vote of approval of the reorganization by a two-thirds majority of the domestic mutual insurance company's policyholders voting on it in person, by proxy, or by mail at a meeting called for the purpose of voting on the reorganization. (2012-161, s. 1.)

§ 58-10-285. Application; contents; process.

(a) An application shall be designated as either a limited application or a standard application. The filing of a limited application shall not preclude the subsequent filing of an application for approval of an initial sale of stock as provided in G.S. 58-10-315.

(b) The application shall be filed in triplicate with the Commissioner and shall include the following items:

- (1) Designation as a limited or standard application.
- (2) A plan of reorganization as set forth in G.S. 58-10-290.
- (3) A plan to obtain the approval of the policyholders in accordance with this Part and the applicant's articles of incorporation and bylaws.
- (4) A copy of the mutual insurance holding company's proposed articles of incorporation and bylaws specifying all membership rights.
- (5) The names, addresses, and occupational information of all corporate officers and members of the initial mutual insurance holding company board of directors.
- (6) Information sufficient to demonstrate that the financial condition of the applicant will not be diminished upon reorganization.
- (7) A copy of the proposed articles of incorporation and bylaws for any insurance company subsidiary or intermediate holding company subsidiary.
- (8) A "Form A" filing as described in Chapter 11 of Title 11 of the North Carolina Administrative Code.
- (9) A statement that the application is in compliance with all pertinent North Carolina General Statutes and Administrative Rules and that the requirements for a plan of reorganization have been fulfilled.
- (10) An index demonstrating wherein the application information supplied in compliance with this subsection is found.
- (11) The applicable fee required by subsection (f) of this section.
- (12) Any other information requested by the Commissioner at any time during the course of proceedings.

(c) Upon receipt and review by the Commissioner of all information provided pursuant to subsection (b) of this section, the Commissioner may establish a period during which the Department will receive and consider public comments on the proposed

reorganization. The Commissioner may inform the public of the limited or standard application in a manner deemed appropriate by the Commissioner and may hold a public hearing concerning the application.

(d) The Commissioner may contract, at the expense of the person filing the application, with any attorneys, actuaries, economists, accountants, consultants, or other professional advisors not otherwise a part of the Commissioner's staff to assist the Commissioner in reviewing the application. These contracts are personal professional service contracts exempt from Articles 3 and 3C of Chapter 143 of the General Statutes.

(e) The expenses of mailing any notices and other materials required by this section shall be borne by the person filing the application.

(f) An applicant filing a limited application under this section shall submit with the application under subsection (b) of this section an application fee of two hundred fifty dollars (\$250.00). An applicant filing a standard application under this section shall submit with the application under subsection (b) of this section an application fee of five hundred dollars (\$500.00). (2012-161, s. 1.)

§ 58-10-290. Plan of reorganization.

(a) A limited application plan of reorganization shall include the following provisions:

- (1) Establishing a mutual insurance holding company with at least one stock insurance company subsidiary or one intermediary stock holding company with a stock insurance company subsidiary, the shares of which shall be held exclusively by the mutual insurance holding company.
- (2) Protecting the interests of existing policyholders.
- (3) Ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic mutual insurance company.
- (4) Describing a plan providing for membership interests of future policyholders.
- (5) Describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders.
- (6) Demonstrating that, in the event of proceedings under Article 30 of this Chapter involving a stock insurance company subsidiary of the mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurance company.
- (7) Describing how any accumulation or prospective accumulation of earnings by the mutual insurance holding company in excess of that determined by the board of directors of the mutual insurance holding company to be necessary shall inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members.

- (8) Describing the nature and content of the annual report and financial statement to be sent to each member.
 - (9) Describing any other relevant matters the applicant deems appropriate.
- (b) A standard application plan of reorganization shall include the following provisions:
- (1) Establishing a mutual insurance holding company with at least one stock insurance company subsidiary or one wholly owned intermediate stock holding company with a stock insurance company subsidiary, the shares of which shall be held exclusively by the wholly owned intermediate holding company.
 - (2) Protecting the interests of existing policyholders.
 - (3) Ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic mutual insurance company.
 - (4) Providing for membership interests of future policyholders.
 - (5) Describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders.
 - (6) Demonstrating that, in the event of proceedings under Article 30 of this Chapter involving a stock insurance company subsidiary of the mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurance company.
 - (7) Describing how any accumulation or prospective accumulation of earnings by the mutual insurance holding company in excess of that determined by the board of directors of the mutual insurance holding company to be necessary shall inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members.
 - (8) Describing the nature and content of the annual report and financial statement to be sent to each member.
 - (9) Describing the applicant's plan for a stock offering in accordance with the provisions of G.S. 58-10-315.
 - (10) Describing any other relevant matters the applicant deems appropriate.
- (c) With regard to either a limited or standard application, the plan of reorganization submitted to the Commissioner shall demonstrate the following:
- (1) Policyholder interests are properly preserved and protected.
 - (2) The plan is fair and equitable to policyholders.
 - (3) The financial condition of the applicant will not be diminished.
- (2012-161, s. 1.)

§ 58-10-295. Powers of the Commissioner.

(a) The Commissioner shall at all times retain jurisdiction over the mutual insurance holding company, its intermediate holding company subsidiaries with stock insurance company subsidiaries, and its stock insurance company subsidiaries.

(b) Following any public comment period or hearing pursuant to G.S. 58-10-285, the Commissioner by order shall approve, conditionally approve, or deny an application. The Commissioner may require, as a condition of approval of the proposed reorganization, modifications of the proposed plan of reorganization that the Commissioner finds necessary. The applicant shall accept the required modifications by filing appropriate amendments to the proposed plan of reorganization with the Commissioner within 30 days of the date of the Commissioner's order requiring the modifications. If the applicant does not accept the required modifications by failing to file the required amendments to the proposed plan of reorganization within 30 days, the proposed reorganization shall be deemed denied.

(c) An approval or conditional approval of a plan of reorganization shall expire if the reorganization is not completed within 210 days after the approval or conditional approval unless the time period is extended by the Commissioner upon a showing of good cause.

(d) The Commissioner may revoke approval or conditional approval of an applicant's plan of reorganization in the event the Commissioner finds the applicant has failed to comply with the plan of reorganization. The Commissioner may compel completion of a plan of reorganization unless the plan is abandoned in its entirety, in accordance with the applicant's provisions for governance.

(e) Upon completion of all elements of a plan of reorganization, the applicant shall provide a notice of completion to the Commissioner. (2012-161, s. 1.)

§ 58-10-300. Special financial requirements.

(a) Mutual insurance holding companies and their insurance company subsidiaries and affiliates shall comply with the provisions of Article 19 of this Chapter except as expressly provided in this Part. Mutual insurance holding companies' investments in subsidiaries, including intermediate holding companies, shall not be subject to any of the restrictions on investment activities set forth in G.S. 58-19-10.

(b) When a mutual insurance holding company acquires or plans to acquire more than fifty percent (50%) of a stock insurance company, the mutual insurance holding company shall submit to the Commissioner a plan describing any membership interests of policyholders.

(c) Each mutual insurance holding company shall supply to the Commissioner, by April 1 of each year, an annual statement consisting of the following:

- (1) An income statement.
- (2) A balance sheet.
- (3) A cash flow statement.
- (4) Complete information on the status of any closed block formed as a part of a plan of reorganization.
- (5) An investment plan covering all assets.

- (6) A statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company.
- (d) At least fifty percent (50%) of the net worth of the mutual insurance holding company, based upon generally accepted accounting practices, shall be invested in insurance company subsidiaries. The Commissioner may waive the fifty percent (50%) limitation upon a showing of good cause.
- (e) No policyholder who is a member of a mutual insurance holding company shall receive on account of such membership interest any payment of a policy credit, dividend, or other distribution unless the payment has been approved by the Commissioner. The Commissioner, if satisfied the proposed payment is fair and equitable to policyholders who are members, may approve the proposed payment and may require as a condition of the approval modification of the proposed payment that the Commissioner finds necessary for the protection of the policyholders.
- (f) Mutual insurance holding companies shall comply with Part 3 of this Article and shall be considered a domestic insurer for the purposes of compliance with Part 3 of this Article. (2012-161, s. 1.)

§ 58-10-305. Reorganization of domestic mutual insurer with mutual insurance holding company.

A domestic mutual insurance company may apply to reorganize by merging its policyholders' membership interests into a mutual insurance holding company by filing with the Commissioner a joint application with the mutual insurance holding company complying with the provisions of G.S. 58-10-285. (2012-161, s. 1.)

§ 58-10-310. Mergers of mutual insurance holding companies.

A mutual insurance holding company may apply to merge with another mutual insurance holding company by filing with the Commissioner a plan of merger and complying with the provisions of Article 19 of this Chapter. (2012-161, s. 1.)

§ 58-10-315. Stock offerings.

(a) No stock offering by a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company shall occur without the prior approval of the Commissioner.

(b) Every application for approval of a stock offering shall contain the following information:

- (1) A description of the stock intended to be offered by the applicant, including a description of all shareholder rights.
- (2) The total number of shares authorized to be issued, the estimated number the applicant requests permission to offer, and the intended date or range of dates for the offer.

- (3) A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined.
 - (4) The name or names of any underwriter, syndicate member, or placement agent involved and, if known, the name or names of each entity, person, or group of persons to whom the stock offering is to be made who will control five percent (5%) of the total outstanding class of shares, and the manner in which the offer is to be tendered. If any such entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management team shall be provided along with the name of each member of the board of directors of the offeror. Copies of any filings with the United States Securities and Exchange Commission disclosing intended acquisitions of the stock shall be included in the application.
 - (5) A description of stock subscription rights to be afforded members of the mutual insurance holding company in conjunction with the stock offering.
 - (6) A detailed description of all expenses to be incurred in conjunction with the stock offering.
 - (7) An explanation of how funds raised by the stock offering are to be used.
 - (8) Any other information requested by the Commissioner.
- (c) No application regarding a planned stock offering shall be approved unless the plan contains the following provisions:
- (1) Prohibiting officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates from purchase or ownership of shares of the stock offering, or issuance of stock options to or for the benefit of such officers, directors, and insiders, in excess of five percent (5%) of the stock offering. The Commissioner may waive this requirement upon a showing of good cause. This subdivision does not limit the rights of officers, directors, and insiders from exercising subscription rights that are generally accorded members of the mutual insurance holding company. However, pursuant to those subscription rights, the officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or own, in the aggregate, more than five percent (5%) of the stock offering.
 - (2) Requiring that, after the initial stock offering, a majority of the board of directors of the mutual insurance holding company be persons who are not interested persons of the mutual insurance holding company or of an affiliated person of the company. For purposes of this subdivision, a member of the mutual insurance holding company or a policyholder of any of its insurance company subsidiaries shall not be considered an "interested person" or an "affiliated person." The Commissioner may waive this requirement upon a showing of good cause.

- (3) For the mutual insurance holding company to adopt articles of incorporation prohibiting any waiver of dividends from stock subsidiaries except under conditions specified in its articles of incorporation and after approval of the waiver by the board of directors of the mutual insurance holding company and the Commissioner.
- (4) Requiring that, after the initial stock offering by an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary of a mutual insurance holding company, the boards of directors of each insurance company or intermediate holding company include at least three directors who are not interested persons of the mutual insurance holding company. The Commissioner may waive this requirement upon a showing of good cause.
- (5) Establishing, within the board of directors of the corporation offering stock, a pricing committee consisting exclusively of directors who are not members of management of the insurance company subsidiary whose responsibility is to evaluate and approve the price of any stock offering.

(d) An insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may issue more than one class of stock, provided, however, that the issuer complies with all of the following requirements:

- (1) At all times a majority of the voting stock is held by the mutual insurance holding company or its subsidiary.
- (2) No class of common stock may possess greater dividend or other rights than the class held by the mutual insurance holding company or its subsidiary.

(e) The Commissioner may retain, at the expense of the person filing the application, any attorneys, actuaries, economists, accountants, consultants, or other professional advisors not otherwise a part of the Commissioner's staff to assist the Commissioner in reviewing the application. These contracts are personal professional service contracts exempt from Articles 3 and 3C of Chapter 143 of the General Statutes.

(f) The expenses of mailing any notices and other materials required by this section shall be borne by the person filing the application.

(g) Upon receipt and review by the Commissioner of all information provided under this section, the Commissioner may establish a period during which the Department will receive and consider public comments about the proposed offering. The Commissioner shall inform the public of the offering by posting information about the application in a manner deemed appropriate by the Commissioner. The Commissioner may hold a public hearing concerning the application or the proposed offering. Following any public comment period or hearing, if applicable, the Commissioner may approve, conditionally

approve, or deny the application. The Commissioner may approve the application if the following apply:

- (1) The offering complies with this Part and other provisions of law.
- (2) The method for establishing the price of a stock offering is consistent with generally accepted market or industry practices for establishing stock offering prices in similar transactions.
- (3) The plan and offering will not unfairly impact the interests of members of the mutual insurance holding company.

Nothing in this subsection shall be deemed to prohibit the filing of a registration statement with the United States Securities and Exchange Commission before or concurrently with the giving of notice to members.

(h) Notwithstanding the provisions of subsections (a) through (g) of this section, stock offerings which are not an initial stock offering, and which are proposed by entities with a class of securities regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the Commissioner, or designated on the National Association of Securities Dealers Automated Quotations national market system (NASDAQ), may be sold in accordance with the following procedure: if a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company, or an insurance company subsidiary of an intermediate holding company intends to make a stock offering which would be governed by the provisions of this subsection, that entity shall deliver to the Commissioner, not less than 60 days prior to the offering, a notice of the planned stock offering and all of the following information:

- (1) The total number of shares intended to be offered.
- (2) The intended date of sale.
- (3) Evidence the stock is regularly traded on one of the public exchanges specified in this subsection.
- (4) A record of the trading price and trading volume of the stock during the prior 52 weeks.

The Commissioner shall be deemed to have approved the sale unless, within 60 days following receipt of such notice, the Commissioner issues an objection to the sale. If the Commissioner issues an objection to the sale, the application process set forth in subsections (a) through (g) of this section shall be followed to determine whether the Commissioner approves of the proposed sale.

(i) Approval of a stock offering obtained under either subsection (g) or (h) of this section shall expire 120 days following the date of the approval or deemed approval, except as otherwise provided by order of the Commissioner.

(j) No prospectus, information, sales material, or sales presentation by the applicant, or by any representative, agent, or affiliate of the applicant, shall contain a representation that the Commissioner has endorsed the price, price range, or any other information relating to the stock.

(k) No company making a stock offering under this section shall engage in any of the following practices:

- (1) Borrow funds from the mutual insurance holding company, or its subsidiaries and affiliates, to finance the purchase of any portion of a stock offering.
- (2) Pay any commissions, "special fees," or any other special payments or extraordinary compensation to officers, directors, interested persons, and affiliates for arranging, promoting, aiding, or assisting in reorganization to a mutual insurance holding company or for arranging, promoting, aiding, assisting, or participating in the structuring and placement of a stock offering.
- (3) Enter into an understanding or agreement transferring legal or beneficial ownership of stock to another person to avoid the requirements of this Part. (2012-161, s. 1.)

§ 58-10-320. Regulation of holding company system.

(a) All material transactions, as that term is defined under Part 3 of this Article, between or among subsidiaries and affiliates of the mutual insurance holding company, must, after review and exercise of director duties by the directors of the mutual insurance holding company, be approved by a majority of the directors of the mutual insurance holding company as being fair and reasonable.

(b) If the Commissioner determines that activities within a mutual insurance holding company system have violated provisions of the General Statutes of North Carolina or the North Carolina Administrative Code or acted to circumvent requirements or prohibitions contained in the General Statutes or Administrative Code, the Commissioner may prohibit or order rescission of any transaction relating to those activities. (2012-161, s. 1.)

§ 58-10-325. Reporting of stock ownership and transactions.

(a) Any director or officer of a mutual insurance holding company, its subsidiary, or affiliate, who acquires directly or indirectly the beneficial ownership of any security issued by any intermediate holding company or any insurance company subsidiary of an intermediate holding company or mutual insurance holding company shall, within 15 days following the transaction, file with the Commissioner a statement of the transaction on the form prescribed by the Commissioner.

(b) A mutual insurance holding company, and its subsidiaries and affiliates, shall file with the Commissioner, within 15 days of receipt, copies of Form 3, Form 4, and Schedule 13D, or any equivalent filings, such filings made under the federal Securities Exchange Act of 1934, as amended. (2012-161, s. 1.)

Part 9. Captive Insurance Companies.

Subpart 1. General Provisions.

§ 58-10-335. Purpose.

(a) This Part shall be known and may be cited as the "North Carolina Captive Insurance Act."

(b) The purpose of this Part is to establish the procedures for the organization and regulation of the operations of captive insurance companies transacting insurance business within this State and thereby promote the general welfare of the people of this State. (2013-116, s. 1.)

§ 58-10-340. Definitions.

The following definitions apply in this Part:

- (1) An "affiliate" of or person "affiliated" with a specific person. – Defined in G.S. 58-19-5.
- (2) Alien. – An alien company as defined in G.S. 58-1-5.
- (3) Alien captive insurance company. – Any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction which imposes statutory or regulatory standards in a form acceptable to the Commissioner on companies transacting the business of insurance in such jurisdiction.
- (4) Association. – Any legal association of individuals, corporations, limited liability companies, partnerships, associations, or other entities that meets the criteria set forth in either sub-subdivision a. or b. of this subdivision:
 - a. The member organizations of the association or the association itself, either alone or in conjunction with some or all of the member organizations, are described by any of the following:
 1. Owning, controlling, or holding with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer.
 2. Having complete voting control over an association captive insurance company incorporated as a mutual insurer.
 3. Constituting all of the subscribers of an association captive insurance company formed as a reciprocal insurer.
 4. Having complete voting control over an association captive insurance company formed as a limited liability company.
 - b. Each member organization of the association is one of the following:
 1. A not-for-profit corporation, nonprofit association, or similar nonprofit organization.
 2. An entity or organization exempt from taxation under Section 501(c) of the Internal Revenue Code, 26 U.S.C. § 501(c).
 3. A municipality, metropolitan government, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity, whether organized by local act or public act of the General Assembly, or any agency, board, or commission of any municipality, metropolitan government, county, authority, utility district or other public body generally classified as a

governmental body or governmental entity. This sub-sub-subdivision shall be liberally construed.

- (5) Association captive insurance company. – Any company that insures risks of the member organizations of an association, and that also may insure the risks of affiliated companies of the member organizations and the risks of the association itself.
- (6) Branch business. – Any insurance business transacted by a branch captive insurance company in this State.
- (7) Branch captive insurance company. – Any alien captive insurance company licensed by the Commissioner to transact the business of insurance in this State through a business unit with a principal place of business in this State. A branch captive insurance company is a pure captive insurance company with respect to operations in this State, unless otherwise permitted by the Commissioner.
- (8) Branch operations. – Any business operations of a branch captive insurance company in this State.
- (9) Captive insurance company. – Any pure captive insurance company, association captive insurance company, industrial insured captive insurance company, risk retention group, protected cell captive insurance company, special purpose captive insurance company, or special purpose financial captive insurance company formed or licensed under this Part.
- (10) Commissioner. – Defined in G.S. 58-1-5.
- (11) Control. – Defined in G.S. 58-19-5. Notwithstanding this definition, for purposes of this Part, the fact that an SPFC exclusively provides reinsurance to a ceding insurer under an SPFC contract is not by itself sufficient grounds for a finding that the SPFC and ceding insurer are under common control.
- (12) Repealed by Session Laws 2016-78, s. 4.1(a), effective June 30, 2016.
- (12a) Core. – A protected cell captive insurance company, excluding its protected cells.
- (13) Counterparty. – An SPFC's parent or affiliated company or a ceding insurer to the SPFC contract. A nonaffiliated company may be designated a counterparty, but that designation is subject to the prior approval of the Commissioner.
- (14) Court. – Defined in G.S. 58-30-10.
- (15) Department. – Defined in G.S. 58-1-5.
- (16) General account. – All assets and liabilities of a protected cell captive insurance company not attributable to a protected cell.
- (17) Incorporated protected cell. – A protected cell that is organized as a corporation or other legal entity separate from the protected cell captive insurance company of which it is a part.

- (17a) Impairment. – When the assets of a captive insurance company or protected cell are less than the sum of its liabilities and required minimum capital and surplus.
- (18) Repealed by Session Laws 2015-99, s. 1, effective June 19, 2015.
- (19) Industrial insured. – An insured that meets all of the following:
 - a. It procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer.
 - b. Its aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000).
 - c. It has at least 25 full-time employees.
- (20) Industrial insured captive insurance company. – Any company that insures risks of the industrial insureds that comprise the industrial insured group and that may insure the risks of the affiliated companies of the industrial insureds.
- (21) Industrial insured group. – Any group of industrial insureds that collectively are described by any of the following:
 - a. Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer.
 - b. Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer.
 - c. Constitute all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer.
 - d. Have complete voting control over an industrial insured captive insurance company formed as a limited liability company.
- (22) Insurance securitization or securitization. – A transaction or a group of related transactions which meet the requirements of sub-subdivisions a. and b. of this subdivision:
 - a. The transactions include capital market offerings that are effected through related risk transfer instruments and facilitating administrative agreements where all or part of the result of such transactions is used to fund the SPFC's obligations under a reinsurance contract with a ceding insurer and by which one of the following occur:
 - 1. Proceeds are obtained by a SPFC, directly or indirectly, through the issuance of securities by the SPFC or any other person.
 - 2. All of the following occur: (i) a person provides one or more letters of credit or other assets for the benefit of the SPFC; (ii) the Commissioner authorizes the SPFC to treat such letters of credit or other assets as admitted assets for purposes of the SPFC's annual report; and (iii) all or any part of such proceeds, letters of credit, or assets, as applicable, are used to fund the SPFC's obligations under a reinsurance contract with a ceding insurer.

- b. The transactions do not include the issuance of a letter of credit for the benefit of the Commissioner to satisfy all or part of the SPFC's capital and surplus requirements under G.S. 58-10-575.
- (23) Member organization. – Any individual, corporation, limited liability company, partnership, association, or other entity that belongs to an association.
- (24) Mutual corporation. – A corporation organized without stockholders and includes a nonprofit corporation with members.
- (25) Mutual insurer. – A company owned by its policyholders where no stock is available for purchase.
- (26) NAIC. – Defined in G.S. 58-1-5.
- (27) Organizational documents. – The documents that must be submitted pursuant to North Carolina law in order to legally form a business in this State or to obtain a license to transact business in this State.
- (28) Parent. – A person that directly or indirectly controls a captive insurance company.
- (29) Participant. – Any person and any affiliate of such person that is insured by a protected cell captive insurance company, where the losses of the participant are limited through a participant contract.
- (30) Participant contract. – A contract by which a protected cell captive insurance company insures the risks of a participant and limits the losses of each such participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.
- (31) Person. – Defined in G.S. 58-1-5.
- (32) Protected cell. – Either of the following:
 - a. A separate account established by a protected cell captive insurance company licensed under this Part, in which assets and liabilities are segregated and insulated by means of this Part from the remainder of the protected cell captive insurance company's assets and liabilities, in accordance with the terms of one or more participant contracts to fund the liability of the protected cell captive insurance company, with respect to the participants as set forth in the participant contracts.
 - b. A separate account established and maintained by an SPFC for one SPFC contract and the accompanying insurance securitization with a counterparty.
- (33) Protected cell assets. – All assets, contract rights, and general intangibles identified with and attributable to a specific protected cell of a protected cell captive insurance company.
- (34) Protected cell captive insurance company. – Any captive insurance company meeting all of the following:
 - a. The minimum capital and surplus required by this Part are provided by one or more sponsors.
 - b. The company is licensed under this Part.

- c. The company insures the risks of separate participants through participant contracts.
 - d. The company funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the protected cell captive insurance company's general account.
- (35) Protected cell liabilities. – All liabilities and other obligations identified with and attributed to a specific protected cell of a protected cell captive insurance company.
 - (36) Pure captive insurance company. – Any company that insures risks of its parent or affiliated companies.
 - (37) Risk retention group. – A captive insurance company organized under the laws of this State pursuant to the Liability Risk Retention Act of 1986, 15 U.S.C. § 3901, et seq., as amended, as a stock or mutual corporation or as a reciprocal or other limited liability entity. Risk retention groups formed under this Part are subject to all applicable insurance laws including, but not limited to, any applicable provisions in Articles 1, 2, 3, 7, 9, 10, 12, 19, 22, 33, and 34 of this Chapter.
 - (38) Securities. – Those different types of debt obligations, equity, surplus certificates, surplus notes, funding agreements, derivatives, and other legal forms of financial instruments.
 - (38a) Special purpose captive insurance company. – A captive insurance company that is formed or licensed under this Part that does not meet the definition of any other type of captive insurance company defined in this section and is designated as a special purpose captive insurance company by the Commissioner.
 - (39) SPFC or Special Purpose Financial Captive. – A captive insurance company that has received a license from the Commissioner for the limited purposes provided for in this Part.
 - (40) SPFC contract. – A contract between the SPFC and the counterparty pursuant to which the SPFC agrees to provide insurance or reinsurance protection to the counterparty for risks associated with the counterparty's insurance or reinsurance business.
 - (41) SPFC securities. – The securities issued by an SPFC.
 - (42) Sponsor. – Any person that is approved by the Commissioner to provide all or part of the capital and surplus required by this Part and to organize and operate a protected cell captive insurance company.
 - (43) Surplus note. – An unsecured subordinated debt obligation deemed to be a surplus certificate under this Part and otherwise possessing characteristics consistent with paragraph 3 of the NAIC's Statement of Statutory Accounting Principles No. 41, as amended. (2013-116, s. 1; 2014-65, s. 1; 2015-99, s. 1; 2016-78, s. 4.1(a).)

§ 58-10-345. Licensing; authority; confidentiality.

(a) Any business entity, when permitted by its organizational documents, may apply to the Commissioner for a license to do any insurance comprised in G.S. 58-7-15; provided, however, that:

- (1) No pure captive insurance company shall insure any risks other than those of its parent and affiliated companies.
- (2) No association captive insurance company shall insure any risks other than those of its association, those of the member organizations of its association, and those of a member organization's affiliated companies.
- (3) No industrial insured captive insurance company shall insure any risks other than those of the industrial insureds that comprise the industrial insured group, [and] those of their affiliated companies.
- (4) No risk retention group shall insure any risks other than those of its members and owners.
- (5) No captive insurance company shall provide personal motor vehicle or homeowner's insurance coverage or any component of those coverages on a direct basis.
- (6) No captive insurance company shall accept or cede reinsurance except as provided in G.S. 58-10-445 and G.S. 58-10-605.
- (7) No captive insurance company shall provide accident and health insurance on a direct basis.
- (8) No captive insurance company shall provide workers' compensation and employer's liability insurance on a direct basis.
- (9) No captive insurance company shall provide life insurance or annuities on a direct basis.
- (10) A special purpose captive insurance company may provide insurance or reinsurance or both for risks as approved by the Commissioner.

(b) No captive insurance company shall transact any insurance business in this State unless:

- (1) It obtains a license from the Commissioner pursuant to subsection (c) of this section authorizing it to do insurance business in this State.
- (2) Its board of directors or committee of managers or, in the case of a reciprocal insurer, its subscribers' advisory committee holds at least one meeting each year in this State. A captive insurance company will be exempt from this board meeting requirement if the captive insurance company utilizes the services of at least two of the following North Carolina-based service providers:
 - a. Legal.
 - b. Accounting.
 - c. Actuarial.
 - d. Investment advisor.
 - e. Captive manager.
 - f. Other service providers acceptable to the Commissioner.

- (3) It maintains its principal place of business in this State.
 - (4) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this State, provided that whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Commissioner shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served and such service shall be done in accordance with G.S. 58-16-30.
- (c) In order to receive a license to issue policies of insurance as a captive insurance company in this State, an applicant business entity shall meet all of the following requirements:
- (1) The applicant business entity shall submit its organizational documents to the Commissioner. If the Commissioner approves the organizational documents, then the Commissioner shall issue a certificate to the applicant business entity certifying the Commissioner's approval. The applicant business entity shall submit the organizational documents, along with a copy of the certificate of approval issued by the Commissioner, and the required filing fees for organizational documents prescribed by North Carolina law to the Secretary of State for filing. Upon filing the organizational documents, the Secretary of State shall issue a certificate of filing to the applicant business entity. The applicant business entity shall submit a copy of the certificate of filing relative to the applicant business entity's organizational documents issued by the Secretary of State to the Commissioner.
 - (2) The applicant business entity shall file a statement under oath of its president and secretary showing its financial condition.
 - (3) The applicant business entity shall file its plan of operation.
 - (4) The applicant business entity shall file other documents as required by the Commissioner.
 - (5) The applicant business entity shall also file with the Commissioner evidence of all of the following:
 - a. The liquidity of the captive insurance company is sufficient relative to the risks to be insured.
 - b. The adequacy of the expertise, experience, and character of the person or persons who will manage it.
 - c. The overall soundness of its plan of operation.
 - d. The adequacy of the loss prevention programs of its insureds.
 - e. Such other factors deemed relevant by the Commissioner in ascertaining whether the applicant business entity will be able to meet its policy obligations.
 - (6) No less than the amount required by G.S. 58-10-370, in a form acceptable to the Commissioner, shall be paid into the applicant business entity.
 - (7) The applicant business entity shall submit to the Commissioner for approval a description of the coverages, deductibles, coverage limits, and

rates, together with such additional information as the Commissioner may require.

(d) Whenever a captive insurance company desires to amend the organizational documents submitted pursuant to subdivision (c)(1) of this section, the company shall submit the amended organizational documents to the Commissioner. If the Commissioner approves the amendment, then the Commissioner shall issue a certificate to the company certifying the Commissioner's approval. The company shall submit the organizational documents, along with a copy of the certificate of approval issued by the Commissioner, and the required filing fees for organizational documents prescribed in North Carolina law to the Secretary of State for filing. Upon filing the organizational documents, the Secretary of State shall issue a certificate of filing to the company. The company shall submit a copy of the certificate of filing relative to the company's organizational documents issued by the Secretary of State to the Commissioner.

(e) If a captive insurance company makes any subsequent material change to any item in the description submitted pursuant to subdivision (c)(7) of this section, then the captive insurance company shall submit an appropriate revision to the Commissioner for approval and shall not offer any additional kinds of insurance until a revision of such description is approved by the Commissioner. The captive insurance company shall inform the Commissioner of any material change in rates within 30 days of the adoption of such change.

(f) Information submitted pursuant to this section is confidential and may be made public by the Commissioner or the Commissioner's designee only upon an order of a court of competent jurisdiction except:

- (1) This subsection shall not apply to any risk retention group.
- (2) The Commissioner shall have the discretion to disclose such information to a public official having jurisdiction over the regulation of insurance in another state, provided that:
 - a. The public official agrees in writing to maintain the confidentiality of such information; and
 - b. The laws of the state in which the public official serves require the information to be and to remain confidential.
- (3) Organizational documents filed with the Secretary of State shall continue to be nonconfidential public records in the Secretary of State's office.

(g) The Commissioner is authorized to retain legal, financial, and audit services from outside the Department, the costs of which shall be reimbursed by the business entity. G.S. 58-2-160 shall apply to audits and processing conducted under the authority of this section.

(h) If the Commissioner is satisfied that the documents and statements filed by an applicant business entity comply with this section, then the Commissioner shall grant a license authorizing it to do insurance business in this State.

(i) A business entity incorporated, formed, or organized under the laws of another jurisdiction that is licensed as a captive insurance company under the provisions of this Part shall have the privileges and be subject to the provisions of the laws of this State or

the laws of such other jurisdiction, as applicable, under which such business entity is incorporated, formed, or organized. In the event of a conflict between the provisions of the laws of this State and the laws of such other jurisdiction under which such business entity is incorporated, formed, or organized, the provisions of this Part shall control. (2013-116, s. 1; 2014-65, s. 2; 2015-99, s. 1; 2016-78, s. 4.1(b); 2018-120, s. 5.1(a).)

§ 58-10-347. Provisional approval for a license.

(a) At the Commissioner's discretion, provisional approval for a license may be granted to an applicant business entity for a period not to exceed 90 days.

(b) An applicant business entity may petition the Commissioner to extend the provisional time provided the petition is received in writing not less than 10 days before expiration of the provisional time and provides sufficient detail to permit the Commissioner to make an informed decision.

(c) Extensions may be granted by the Commissioner for 30-day periods upon a showing by the applicant business entity of the reasons for requesting an extension and a determination by the Commissioner of good cause for the extension.

(d) As a condition precedent to provisionally approving a license under this section, the applicant business entity shall have filed an application required by this Part and the Commissioner shall have made a preliminary finding that the expertise, experience, and character of the person or persons who will control and manage the applicant business entity are acceptable.

(e) The Commissioner may limit the authority of any provisional licensee in any way deemed necessary.

(f) The Commissioner may rescind the provisional approval at any time if the Commissioner determines that the interests of insureds or the public are at risk.

(g) If the applicant business entity fails to complete the license application process, the provisional approval shall terminate automatically. (2016-78, s. 4.1(c).)

§ 58-10-350. Commissioner use of consultants and other professionals.

The Commissioner may contract with consultants and other professionals to expedite and complete the application process, audits, and other regulatory activities required pursuant to this Part. Such contracts for financial, legal, audits, and other services shall not be subject to any of the following:

(1) G.S. 114-2.3.

(2) G.S. 147-17.

(3) Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with rules and procedures adopted under those Articles concerning procurement, contracting, and contract review. (2013-116, s. 1; 2016-78, s. 4.1(d).)

§ 58-10-355. Organizational audit.

In addition to the processing of the application, an organizational audit may be performed before an applicant business entity is licensed. Such investigation or audit shall

consist of a general review of the applicant business entity's corporate records, including charters, bylaws, and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the Commissioner deems necessary. (2013-116, s. 1; 2015-99, s. 1; 2016-78, s. 4.1(e); 2018-120, s. 5.1(b).)

§ 58-10-360. Designation of captive manager.

Before licensing, the applicant business entity shall report in writing to the Commissioner the name and address of any captive manager designated to manage the captive insurance company. The Commissioner shall approve the captive manager and may require the submission of additional information regarding the proposed captive manager in a form and manner as the Commissioner may designate. (2013-116, s. 1; 2014-65, s. 3; 2015-99, s. 1.)

§ 58-10-365. Names of companies.

No applicant business entity or captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in this State nor any name likely to mislead the public. Any name adopted by an applicant business entity or a captive insurance company shall comply with the requirements of State law. (2013-116, s. 1; 2014-65, s. 4.)

§ 58-10-370. Capital and surplus requirements.

(a) No applicant business entity shall be issued a license unless it possesses and maintains unimpaired paid-in capital and surplus of:

- (1) In the case of a pure captive insurance company, not less than two hundred fifty thousand dollars (\$250,000) or such other amount determined by the Commissioner.
- (2) In the case of an association captive insurance company, not less than five hundred thousand dollars (\$500,000).
- (3) In the case of an industrial insured captive insurance company, not less than five hundred thousand dollars (\$500,000).
- (4) In the case of a risk retention group, not less than one million dollars (\$1,000,000).
- (5) In the case of a protected cell captive insurance company, not less than two hundred fifty thousand dollars (\$250,000) or such other amount determined by the Commissioner.
- (6) In the case of a special purpose captive insurance company, not less than two hundred fifty thousand dollars (\$250,000) or such other amount determined by the Commissioner.

(b) The Commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business to be transacted.

(c) Capital and surplus required by subsections (a) and (b) of this section shall be in the form of cash, securities approved by the Commissioner, a clean irrevocable letter of

credit issued by a bank approved by the Commissioner, or other form approved by the Commissioner. (2013-116, s. 1; 2014-65, s. 5; 2015-99, s. 1; 2016-78, s. 4.1(f).)

§ 58-10-375. Dividends and distributions.

No captive insurance company shall pay a dividend or other distribution from capital or surplus without the prior approval of the Commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by or determined in accordance with formulas approved by the Commissioner. A captive insurance company may otherwise make such distributions as are in conformity with its purposes and approved by the Commissioner. (2013-116, s. 1.)

§ 58-10-380. Formation of captive insurance companies.

(a) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

(b) An association captive insurance company, an industrial insured captive insurance company, or a risk retention group may be any of the following:

- (1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (2) Incorporated as a mutual corporation.
- (3) Organized as a reciprocal insurer in accordance with Article 15 of this Chapter.
- (4) Organized as a manager-managed limited liability company.

(b1) A special purpose captive insurance company may be organized and operated in any form of business organization authorized by the Commissioner.

(c) Repealed by Session Laws 2015-99, s. 1, effective June 19, 2015.

(d) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized with no par value.

(e) In the case of a captive insurance company formed as a corporation, at least one of the members of the board of directors shall be a resident of this State. In the case of a captive insurance company formed as a reciprocal insurer, at least one of the members of the subscribers' advisory committee shall be a resident of this State. In the case of a captive insurance company formed as a limited liability company, at least one of the managers shall be a resident of this State.

(f) Captive insurance companies formed as corporations, limited liability companies, partnerships, or as nonprofit corporations under this Part shall have the privileges provided in and be subject to all State statutes and laws, as applicable, provided that this Part shall control in the event of a conflict.

(g) Mergers, consolidations, conversions, mutualizations, acquisitions, redomestications, or other similar transactions of captive insurance companies shall be subject to the same provisions of this Chapter applicable to traditional insurance companies, except:

- (1) The Commissioner may, upon request of an insurer party to a merger authorized under this subsection, waive such applicable requirements.
- (2) The Commissioner may waive or modify the requirements for public notice and hearing.
- (3) An alien insurer may be a party to a merger authorized under this subsection, provided that the requirements for a merger between a captive insurance company and a foreign insurer under this Chapter shall apply to a merger between a captive insurance company and an alien insurer under this subsection. For the purposes of this subdivision, an alien insurer shall be treated as a foreign insurer under this Chapter, and the domicile of the alien shall be the equivalent to that of another state.

(h) Captive insurance companies formed as reciprocal insurers under this Part shall have the privileges provided in and be subject to Article 15 of this Chapter in addition to this Part, provided that this Part shall control in the event of a conflict. To the extent a reciprocal insurer is made subject to other provisions of this Chapter pursuant to Article 15 of this Chapter, such provisions shall not be applicable to a reciprocal insurer formed under this Part unless such provisions are expressly made applicable to captive insurance companies under this Part.

(i) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may authorize a quorum of its board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

(j) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory committee to consist of no fewer than one-third of the number of its members.

(k) With the Commissioner's approval, a captive insurance company organized as a stock insurer may convert to a nonprofit corporation with one or more members by filing with the Secretary of State an election for such conversion, provided that:

- (1) The election shall certify that, at the time of the company's original organization and at all times thereafter, the company has conducted its business in a manner not inconsistent with a nonprofit purpose.
- (2) At the time of the filing of its election, the company shall file with both the Commissioner and the Secretary of State articles of conversion, including articles of incorporation consistent with this Part and with all other applicable State statutes and laws.

(l) In the case of a captive insurance company formed as a limited liability company, a reciprocal insurance company, or mutual insurance company, any proxy executed by the members, subscribers, and policyholders of each shall be valid if executed and transmitted in compliance with all applicable State statutes and laws.

(m) With the Commissioner's prior written approval, a captive insurance company may establish one or more separate accounts and may allocate to them amounts to provide for the insurance of risks of certain of its parents, affiliates, or members, as the case may be, subject to the following:

- (1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the captive insurance company.
- (2) Amounts allocated to a separate account in the exercise of the power granted by this subsection are owned by the captive insurance company, and the captive insurance company may not be nor hold itself out to be a trustee with respect to such amounts.
- (3) Unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued in accordance with the laws or rules otherwise applicable to the captive insurance company's assets.
- (4) If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the captive insurance company may conduct.
- (5) No sale, exchange, or other transfer of assets may be made by a captive insurance company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless (i) in the case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; and (ii) such transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the Commissioner. The Commissioner may approve other transfers among such accounts, if, in the Commissioner's opinion, such transfers would be equitable.
- (6) To the extent deemed necessary by a captive insurance company in order to comply with any applicable federal or State laws, the captive insurance company, with respect to any separate account, including any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest in the separate account appropriate voting and other rights and special procedures for the conduct of the business of such account, including special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account. (2013-116, s. 1; 2015-99, s. 1; 2016-78, s. 4.1(g).)

§ 58-10-385. Directors.

(a) Every captive insurance company shall report to the Commissioner within 30 days after any change in its executive officers or directors, including in its report a biographical affidavit for each new officer or director. The change shall be deemed approved unless it is disapproved within 30 days from the completion of the Commissioner's review of the biographical affidavit.

(b) No director, officer, or employee of a captive insurance company shall, except on behalf of the captive insurance company, accept or be the beneficiary of, any fee, brokerage, gift, or other compensation because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the captive insurance company unless otherwise approved in advance by the Commissioner, but such person may receive reasonable compensation for necessary services rendered to the captive insurance company in his or her usual private, professional, or business capacity.

(c) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the captive insurance company. (2013-116, s. 1; 2015-99, s. 1; 2018-120, s. 5.1(c).)

§ 58-10-390. Conflict of interest.

(a) Each captive insurance company licensed in this State is required to adopt a conflict of interest statement for officers, directors, and key employees. Such statement shall disclose that the individual has no outside commitments, personal or otherwise, that would divert him or her from his or her duty to further the interests of the captive insurance company he or she represents, but this shall not preclude such person from being a director or officer in more than one insurance company.

(b) Each officer, director, and key employee shall file such disclosure with the board of directors or other governing body of the captive insurance company annually. (2013-116, s. 1; 2015-99, s. 1; 2016-78, s. 4.1(h).)

§ 58-10-395. Plan of operation change.

(a) Any material change in a captive insurance company's plan of operation plan of operation that was filed with the Commissioner at the time of initial application and any subsequent amendment of the plan requires prior approval from the Commissioner.

(b) Any change in any other information filed with the application must be filed with the Commissioner within 60 days but does not require prior approval. (2013-116, s. 1; 2014-65, s. 6; 2016-78, s. 4.1(i).)

§ 58-10-400. Insurance manager and intermediaries.

No person shall act in or from this State as a managing general agent, producer, or reinsurance intermediary for captive insurance company business without the authorization of the Commissioner. (2013-116, s. 1; 2014-65, s. 7; 2016-78, s. 4.1(j).)

§ 58-10-405. Annual reports.

(a) No captive insurance company shall be required to make any annual report to the Commissioner except as provided in this Part.

(b) Prior to March 15 of each year, each captive insurance company shall submit to the Commissioner a report of its financial condition on the preceding December 31, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the Commissioner requires, approves, or accepts the use of other comprehensive basis of accounting. The Commissioner may require, approve, or accept any appropriate or necessary modifications of the other comprehensive basis of accounting for the type of insurance and kinds of insurers to be reported upon. The Commissioner may require additional information to supplement such report. Except as otherwise provided, each risk retention group and association captive insurance company shall file its report in the form required by G.S. 58-2-165, and each risk retention group shall comply with the requirements set forth in G.S. 58-4-5. All other captive insurance companies shall report on forms adopted by the Commissioner. G.S. 58-10-345(f) shall apply to each report filed pursuant to this section. Branch captive insurance companies shall file the report required by this section unless otherwise required by G.S. 58-10-545. Special Purpose Financial Captive insurance companies shall report in accordance with G.S. 58-10-625.

(c) A pure captive insurance company, a special purpose captive insurance company, or an industrial insured captive insurance company may make written application to the Commissioner for filing the required report on an alternative reporting date based on the company's fiscal year-end. If an alternative reporting date is granted by the Commissioner, then the annual report is due 75 days after the fiscal year-end.

(d) The Commissioner may require any captive insurance company to file a report on its financial condition semiannually, quarterly, monthly, or any other frequency determined by the Commissioner.

(e) The Commissioner may waive the filing of the annual report required by this section subject to the filing of the annual audit required by G.S. 58-10-415. A captive insurance company must make a written request for exemption from the annual report at least 30 days prior to the annual report due date. The Commissioner may not simultaneously exempt a captive insurance company from both the annual report and the annual audit requirements.

(f) Extensions of the due date for filings required by this section may be granted by the Commissioner for 30-day periods upon a showing by the captive insurance company of the reasons for requesting an extension and determination by the Commissioner of good cause for the extension. The request for extension must be received in writing not less than 10 days before the due date and in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension. (2013-116, s. 1; 2014-65, s. 8; 2015-99, s. 1; 2016-78, s. 4.1(k).)

§ 58-10-410: Reserved for future codification purposes.

§ 58-10-415. Annual audit and statement of actuarial opinion.

(a) All captive insurance companies with the exception of risk retention groups shall have an annual audit by an independent certified public accountant and shall file such audited financial report with the Commissioner on or before June 30 for the prior calendar year. Risk retention groups shall comply with Parts 6 and 7 of Article 10 of this Chapter instead of this section.

(b) Captive insurance companies that have received approval to report on other than a calendar year basis pursuant to G.S. 58-10-405 shall file such statements within 180 days after the end of their fiscal year.

(c) Captive insurance companies with less than one million two hundred thousand dollars (\$1,200,000) in written premium may make a written request for exemption from the annual audit requirement. Such request must be made at least 90 days prior to the captive insurance company's fiscal year-end or as otherwise required by the Commissioner. Requests will be considered on a case-by-case basis and may be subject to the Commissioner receiving an annual audit of the captive insurance company's parent in lieu of the annual audit of the captive insurance company.

(c1) Extensions of the due dates for filings required by this section may be granted by the Commissioner for 30-day periods upon a showing by the captive insurance company of the reasons for requesting an extension and determination by the Commissioner of good cause for the extension. The request for extension must be received in writing not less than 10 days before the due date and in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

(c2) G.S. 58-10-345(f) shall apply to all information filed pursuant to this section.

(d) The annual audit shall consist of the following:

(1) Annual audited financial report. – The annual audited financial report shall include the following:

- a. Financial statements. – Financial statements shall be prepared in accordance with generally accepted accounting principles, unless the Commissioner requires, approves, or accepts the use of other comprehensive basis of accounting, with useful or necessary modifications or adaptations required, approved, or accepted by the Commissioner, and shall be audited by an independent certified public accountant in accordance with generally accepted auditing standards as determined by the American Institute of Certified Public Accountants. The Commissioner may require that the financial statements be supplemented by additional information.
- b. Notes to financial statements. – The notes to financial statements shall be those required by generally accepted accounting principles, or as otherwise approved by the Commissioner, and shall also include a reconciliation of differences, if any, between the audited financial report and the report of the captive insurance company's financial condition filed with the Commissioner in accordance with G.S. 58-10-405(b).
- c. Related required auditor communications. – Copies of related required auditor communications in accordance with generally accepted auditing standards.

- (2) Certified public accountant's affirmation. – The certified public accountant shall furnish a written statement in the engagement letter or other document submitted to the captive insurance company that the certified public accountant is aware of, and will comply with, the responsibilities imposed by G.S. 58-10-420(b) and G.S. 58-10-420(c).
- (3), (4) Repealed by Session Laws 2014-65, s. 9, effective July 1, 2014.
- (5) Repealed by Session Laws 2015-99, s. 1, effective June 19, 2015.
- (e) Every captive insurance company, unless otherwise exempted by the Commissioner, shall annually submit with the annual audited financial report the opinion of an appointed actuary entitled, "Statement of Actuarial Opinion," evaluating the captive insurance company's loss reserves and loss expense reserves. The individual who prepares the Statement of Actuarial Opinion shall be a Fellow of the Casualty Actuarial Society, a member in good standing of the American Academy of Actuaries, or an individual who has demonstrated to the Commissioner competence in loss reserve evaluation. (2013-116, s. 1; 2014-65, s. 9; 2015-99, s. 1; 2016-78, s. 4.1(l).)

§ 58-10-420. Independent certified public accountants.

(a) A captive insurance company, after becoming subject to this Part, shall within 60 days, if not already disclosed at the time of application, report to the Commissioner in writing, the name and address of the independent certified public accountant retained to conduct the annual audit set forth in G.S. 58-10-415.

(b) A captive insurance company shall require its independent certified public accountant to immediately notify in writing an officer and all members of the board of directors or other governing body of the captive insurance company of any determination by the independent certified public accountant that the captive insurance company has materially misstated its financial condition in its report to the Commissioner as required in G.S. 58-10-405. A captive insurance company receiving a notification pursuant to this subsection shall forward a copy of the notification to the Commissioner within five business days after receipt of the notification and shall provide the independent certified public accountant with proof that the notification was forwarded to the Commissioner. If the independent certified public accountant fails to receive the proof within the five-day period required by this subsection, the independent certified public accountant shall within the next five business days submit a copy of the notification to the Commissioner.

(c) A captive insurance company shall require its independent certified public accountant to make available for review by the Commissioner or his or her appointed agent the work papers prepared in the conduct of the audit of the captive insurance company. The captive insurance company shall require that the independent certified public accountant retain the audit work papers for a period of not less than five years after the period reported upon. The aforementioned review by the Commissioner shall be considered an audit, and all working papers obtained during the course of such audit shall be confidential. The captive insurance company shall require that the independent certified public accountant provide copies, in such form as the Commissioner deems appropriate, of any of the working papers which the Commissioner considers relevant. Such working papers may be retained

by the Commissioner. "Work papers" as referred to in this section include, but are not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of captive insurance company records, or other documents prepared or obtained by the independent certified public accountant and the independent certified public accountant's employees in the conduct of their audit of the captive insurance company.

(d) The lead audit partner may not act in that capacity for more than five consecutive years. For purposes of this subsection, lead audit partner means the partner having primary responsibility for the audit. The person shall be disqualified from acting in that or similar capacity for the captive insurance company for a period of five consecutive years. A captive insurance company may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least 30 days before the end of the fiscal year. The Commissioner may consider the following factors in determining if the relief should be granted:

- (1) Number of partners, expertise of the partners, or the number of insurance clients in the firm; and
- (2) Premium volume of the captive insurance company.
- (3) Repealed by Session Laws 2016-78, s. 4.1(m), effective June 30, 2016.

(e) Risk retention groups shall comply with Part 7 of Article 10 of this Chapter instead of this section. (2013-116, s. 1; 2014-65, s. 10; 2015-99, s. 1; 2016-78, s. 4.1(m).)

§ 58-10-425. Deposit requirement.

(a) The Commissioner may require a captive insurance company to maintain a deposit with the Commissioner in a form and amount as the Commissioner may specify.

(b) A captive insurance company may receive interest or dividends from deposits held by the Commissioner or exchange the deposits for others of equal value with the approval of the Commissioner.

(c) If a captive insurance company discontinues business, the Commissioner shall return deposits held by the Commissioner only after being satisfied that all obligations of the captive insurance company have been discharged. (2013-116, s. 1; 2014-65, s. 11.)

§ 58-10-430. Audits.

(a) Whenever the Commissioner determines it to be prudent, the Commissioner shall audit a captive insurance company's affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this Part. The expenses and charges of the audit shall be paid by the captive insurance company.

(b) G.S. 58-2-160 shall apply to audits conducted under this section.

(c) All audit reports, preliminary audit reports or results, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in the course of an audit made under this section are confidential, are not subject to subpoena, and may not be made public by the Commissioner or an employee or agent of the Commissioner. Nothing in this subsection shall prevent the Commissioner from using such information in furtherance of the Commissioner's

regulatory authority under this Chapter. The Commissioner shall have the discretion to grant access to such information to public officials having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this State or any other state or agency of the federal government at any time only if the officials receiving the information agree in writing to maintain the confidentiality of the information in a manner consistent with this subsection.

(d) Risk retention groups are not subject to this section and shall instead be audited in accordance with the Examination Law, G.S. 58-2-131 through G.S. 58-2-134. (2013-116, s. 1; 2014-65, s. 12; 2015-99, s. 1; 2016-78, s. 4.1(n).)

§ 58-10-435. License suspension or revocation.

(a) The license of a captive insurance company may be suspended or revoked if the Commissioner finds, upon audit, hearing, or other evidence, that a captive insurance company has committed one or more of the violations described in subdivisions (1) through (7) of this subsection, or met any of the criteria in subdivisions (8) through (10) of this subsection, and that the suspension or revocation is in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this Chapter:

- (1) Insolvency or impairment of capital or surplus.
- (2) Failure to meet the requirements of G.S. 58-10-370.
- (3) Refusal or failure to submit an annual report, as required by this Part, or any other report or statement required by law or by lawful order of the Commissioner.
- (4) Failure to comply with its own charter, bylaws, or other organizational document.
- (5) Failure to submit to or pay the cost of an audit or any legal obligation relative to an audit, as required by this Part.
- (6) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders.
- (7) Failure otherwise to comply with the laws of this State.
- (8) Failure to commence business according to its plan of operation within two years of being licensed.
- (9) Failure to carry on insurance business in or from this State.
- (10) By request of the captive insurance company.

(b) Before the Commissioner suspends or revokes the license of a captive insurance company under subdivisions (a)(7) or (a)(8) of this section, the Commissioner shall give the captive insurance company notice in writing of the grounds on which the Commissioner proposes to suspend or revoke the license and shall afford the captive insurance company an opportunity to make objection in writing within the period of 30 days after receipt of notice. The Commissioner shall take into consideration any objection received by the Commissioner within that period and, if the Commissioner decides to suspend or revoke

the license, cause the order of suspension or revocation to be served on the captive insurance company. (2013-116, s. 1; 2016-78, s. 4.1(o).)

§ 58-10-440. Investment requirements.

(a) Except as may be otherwise authorized by the Commissioner, association captive insurance companies and risk retention groups shall comply with the investment requirements contained in G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable. Notwithstanding any other provision of this Chapter, the Commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company, industrial insured captive insurance company, protected cell captive insurance company, special purpose captive insurance company, or special purpose financial captive insurance company shall be subject to any restrictions on allowable investments, provided that the Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

(c) No captive insurance company or protected cell shall make a loan to or an investment in an affiliate or a participant without prior written approval of the Commissioner, and any such loan or investment shall be evidenced by documentation approved by the Commissioner. Loans of minimum capital and surplus funds required by G.S. 58-10-370 are prohibited.

(d) Notwithstanding this section or G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, an association captive insurance company of an association described in G.S. 58-10-340(4)(b) [G.S. 58-10-340(4)b.] may hold any interest in qualified headquarters property, and the qualified headquarters property shall be admitted assets and authorized investments of the association captive insurance company. The net book value of the qualified headquarters property deemed admitted and authorized under this subsection may not exceed two million five hundred thousand dollars (\$2,500,000), and an association captive insurance company holding qualified headquarters property pursuant to this subsection shall at all times maintain total surplus, without regard to the qualified headquarters property, of at least the sum of (i) fifty percent (50%) of the net book value of the qualified headquarters property and (ii) the minimum capital and surplus requirements. For purposes of this subsection, "qualified headquarters property" includes the real property and the building in which the principal office of the association captive insurance company is located and also includes any improved and unimproved real property of the association captive insurance company that is located within 1,500 feet of the company's principal office. (2013-116, s. 1; 2014-65, s. 13; 2015-99, s. 1; 2016-78, s. 4.1(p).)

§ 58-10-445. Reinsurance.

(a) Any captive insurance company may provide reinsurance as authorized by this Chapter on risks ceded by any other insurer.

(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with this Chapter. If the reinsurer is licensed as a risk retention group, then the ceding risk retention group or its members must qualify for membership with the reinsurer. The Commissioner shall have the discretion to allow a captive insurance company to take credit for the reinsurance of risks or portions of risks ceded to an unauthorized reinsurer, after review, on a case-by-case basis. The Commissioner may require any documents, financial information, or other evidence that will allow an unauthorized reinsurer to demonstrate adequate security for its financial obligations.

(c) In addition to reinsurers authorized by this Chapter, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association to the extent authorized by the Commissioner. The Commissioner may require any documents, financial information, or other evidence that such a pool, exchange, or association will be able to provide adequate security for its financial obligations. The Commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that in the Commissioner's judgment are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and benefit of the public at large.

(d) Insurance by a captive insurance company of any workers' compensation or accident and health-qualified self-insured plan shall only be in the form of reinsurance.

(e) No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer.

(f) No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer.

(g) Reinsurance under this section shall be effected through a written agreement of reinsurance setting forth the terms, provisions, and conditions governing such reinsurance. The Commissioner may require that complete copies of all reinsurance treaties and contracts be filed and approved by the Commissioner. (2013-116, s. 1; 2014-65, s. 14.)

§ 58-10-450. Membership in rating organizations; exemption from compulsory associations.

(a) No captive insurance company shall be required to join a rating organization.

(b) No captive insurance company shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this State, nor shall any such captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company. (2013-116, s. 1.)

§ 58-10-455. Taxation.

A captive insurance company is taxed in accordance with Article 8B of Chapter 105 of the General Statutes. (2013-116, s. 1.)

§ 58-10-460. Adoption and amendment of rules by Commissioner.

The Commissioner may adopt and, from time to time, amend such rules relating to captive insurance companies as are necessary to enable the Commissioner to carry out the provisions of this Part. (2013-116, s. 1.)

§ 58-10-465. Applicable provisions.

(a) No provisions of this Chapter, other than those contained in this Part or as expressly provided in this Part, shall apply to captive insurance companies. Risk retention groups shall have the privileges and be subject to Article 22 of this Chapter in addition to the applicable provisions of this Part.

(b) The Commissioner may exempt special purpose captive insurance companies, on a case-by-case basis, from provisions of this Chapter and any rules established under this Chapter that the Commissioner determines to be inappropriate given the nature of the risks to be insured. (2013-116, s. 1; 2014-65, s. 15; 2015-99, s. 1.)

§ 58-10-470: Repealed by Session Laws 2016-78, s. 4.1(q), effective June 30, 2016.

§ 58-10-475. Supervision; rehabilitation; liquidation.

Except as otherwise provided in this Part, the terms and conditions set forth in Article 30 of this Chapter shall apply in full to captive insurance companies licensed under this Part. (2013-116, s. 1; 2015-99, s. 1.)

§ 58-10-480. Authority for expenditure of public funds.

Any municipality, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity whether chartered or organized by local act or public act of the General Assembly, or otherwise, or any agency, board, or commission of any municipality, metropolitan government, county, authority, utility district, or other public body generally classified as a governmental body or governmental entity may expend public funds for the purchase of capital stock in a captive insurance company or to provide guaranty capital in a mutual captive insurance company, provided that at the time of authorization of expenditure of public funds adequate insurance markets in the United States are not available to cover the risks, hazards, and liabilities of the public body or that the needed coverage is only available at excessive rates or with unreasonable deductibles. (2013-116, s. 1.)

§ 58-10-485. Violations and penalties.

(a) If, after providing the opportunity for a contested case hearing held in accordance with the provisions of Article 3A of Chapter 150B of the General Statutes, the Commissioner finds that any insurer, person, or entity required to be licensed or authorized

to transact the business of insurance under this Part has violated any provision of this Part or any rule or regulation authorized by this Part, the Commissioner may order:

- (1) The insurer, person, or entity to cease and desist from engaging in the act or practice giving rise to the violation.
- (2) Payment of a monetary penalty pursuant to G.S. 58-2-70.
- (3) The suspension or revocation of the insurer's, person's, or entity's license.

(b) Whenever the Commissioner has evidence that any person has violated or is violating any provisions of this Part, or has violated or is violating any order or requirement of the Commissioner issued by the Commissioner under this Part, and that the interests of policyholders, creditors, or the public may be irreparably harmed by delay, the Commissioner may issue an emergency cease and desist order that shall become effective on the date specified in the order. The emergency cease and desist order shall also include a notice of hearing, which shall be conducted as provided under Article 3A of Chapter 150B of the General Statutes. However, the person ordered to cease and desist under this subsection may request and shall be granted an expedited review of the order. The emergency order shall remain in effect prior to and during the proceedings, unless modified by the Commissioner. (2013-116, s. 1; 2015-99, s. 1.)

§ 58-10-490. Inactive captive insurance companies.

(a) As used in this section, unless the context requires otherwise, "inactive captive insurance company" means a captive insurance company which meets both of the following criteria:

- (1) The company has ceased transacting the business of insurance.
- (2) There are no remaining liabilities associated with policies written or assumed by the company.

(b) The Commissioner may declare a captive insurance company, other than a risk retention group, an inactive captive insurance company, if such captive insurance company meets the criteria of subsection (a) of this section.

(c) An inactive captive insurance company shall possess and maintain unimpaired capital and surplus in an amount determined by the Commissioner.

(d) An inactive captive insurance company shall not be subject to or liable for the payment of any tax under Article 8B of Chapter 105 of the General Statutes.

(e) The Commissioner may exempt an inactive captive insurance company from any of the filing and reporting requirements of this Part. (2015-99, s. 1.)

§ 58-10-495. Captive insurance companies reinsuring life insurance policies.

(a) A captive insurance company that reinsures life insurance policies, including term, universal, and variable life policies, and related guarantees and riders, shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring life insurance policies.

(b) For purposes of the annual report required pursuant to G.S. 58-10-405, a captive insurance company described by subsection (a) of this section shall comply with the following requirements:

- (1) If the company uses statutory accounting principles, it shall submit the annual report in the form of the annual statement approved by the NAIC for life insurers, as modified or supplemented by the Commissioner, unless the Commissioner requires or approves a different form of annual report.
- (2) If the company uses generally accepted accounting principles, including any appropriate modifications or adaptations thereto approved by the Commissioner, it shall submit the annual report in a form approved by the Commissioner. (2013-116, s. 1.)

§ 58-10-496. Waiver or modification.

The Commissioner may waive or modify any provision of this Part if such waiver or modification, in the Commissioner's opinion, is justified, based on sound actuarial, accounting, or business principles, and does not diminish the solvency prospects of the captive insurance company. No waiver or modification granted by the Commissioner pursuant to this section shall result in a greater regulatory burden than imposed by this Part prior to the exercise of such waiver or modification. (2016-78, s. 4.1(r).)

Subpart 2. Protected Cell Captive Insurance Companies.

§ 58-10-500. Forming a protected cell captive insurance company.

(a) One or more sponsors may form a protected cell captive insurance company under this Subpart.

(b) A protected cell captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, as a mutual corporation, as a nonprofit corporation with one or more members, or as a manager-managed limited liability company. (2013-116, s. 1.)

§ 58-10-505. Additional filing requirements for applicant protected cell captive insurance companies.

In addition to the information required by G.S. 58-10-345(c), each applicant protected cell captive insurance company shall file with the Commissioner all of the following:

- (1) Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the Commissioner, and how it will report such experience to the Commissioner.
- (2) A statement acknowledging that all records of the applicant, including records pertaining to any protected cells, shall be made available for inspection or audit by the Commissioner or the Commissioner's designated agent.
- (3) All contracts or sample contracts between the applicant business entity and any participants.

- (4) A statement describing how expenses shall be allocated to each protected cell in a fair and equitable manner. (2013-116, s. 1; 2015-99, s. 1; 2016-78, s. 4.1(s).)

§ 58-10-510. Establishment of protected cells.

(a) A protected cell captive insurance company licensed under this Part may establish and maintain one or more incorporated or unincorporated protected cells, to insure risks of one or more participants, subject to the following conditions:

- (1) A protected cell captive insurance company may establish one or more protected cells if the Commissioner has approved in writing a plan of operation or amendments to a plan of operation submitted by the protected cell captive insurance company with respect to each protected cell. A plan of operation shall include, but is not limited to, the specific business objectives and investment guidelines of the protected cell, provided that the Commissioner may require additional information in the plan of operation.
- (2) Upon the Commissioner's written approval of the plan of operation, the protected cell captive insurance company may attribute insurance obligations with respect to its insurance business to the protected cell in accordance with the approved plan of operation.
- (3) A protected cell shall have its own distinct name or designation that shall include the words "protected cell" or "incorporated cell."
- (4) The protected cell captive insurance company shall transfer all assets attributable to a protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell. Protected cell assets must be held in the protected cell accounts for the purpose of satisfying the obligations of that protected cell.
- (5) Repealed by Session Laws 2015-99, s. 1, effective June 19, 2015.
- (6) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plans of operation and participant contracts approved by the Commissioner. Any attribution of assets between the general account and a protected cell shall be in cash or in readily marketable securities with established market values unless otherwise approved by the Commissioner.

(b) The creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company, unless the protected cell is an incorporated cell. Amounts attributed to a protected cell under this Part, including assets transferred to a protected cell account, are owned by the protected cell. No protected cell captive insurance company shall be, or hold itself out to be, a trustee with respect to those protected cell assets of that protected cell account. Notwithstanding this subsection, the protected cell captive insurance company may allow for a security interest

to attach to protected cell assets or a protected cell account when the security interest is in favor of a creditor of the protected cell and otherwise allowed under applicable law.

(c) This Part shall not be construed to prohibit the protected cell captive insurance company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the protected cell assets of a protected cell, if all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the protected cell assets of that protected cell and not from the protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account.

(d) A protected cell captive insurance company shall establish administrative and accounting procedures necessary to properly identify (i) the one or more protected cells of the protected cell captive insurance company and (ii) the assets and liabilities attributable to each protected cell. The directors of a protected cell captive insurance company shall keep protected cell assets and liabilities:

- (1) Separate and separately identifiable from the assets and liabilities of the protected cell captive insurance company's general account.
- (2) Attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

If this subsection is violated, then the remedy of tracing is applicable to protected cell assets when commingled with protected cell assets of other protected cells or the assets of the protected cell captive insurance company's general account. The remedy of tracing shall not be construed as an exclusive remedy.

(e) When establishing a protected cell, the protected cell captive insurance company shall attribute to the protected cell assets a value at least equal to the reserves and other insurance liabilities attributed to that protected cell.

(f) Each protected cell shall be accounted for separately on the books and records of the protected cell captive insurance company to reflect (i) the financial condition and results of operations of such protected cell, (ii) net income or loss, (iii) dividends or other distributions to participants, and (iv) such other factors as may be provided in the participant contract or required by the Commissioner.

(g) No asset of a protected cell shall be chargeable with liabilities arising out of any other insurance business the protected cell captive insurance company may conduct.

(h) No sale, exchange, or other transfer of assets shall be made by such protected cell captive insurance company between or among any of its protected cells without the consent of such protected cells.

(i) No sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a protected cell captive insurance company or participant without the Commissioner's approval. In no event shall the Commissioner's approval be given if the sale, exchange, transfer, dividend, or distribution would result in the insolvency or impairment of a protected cell.

(j) The protected cell captive insurance company shall attribute all insurance obligations, assets, and liabilities relating to a reinsurance contract entered into with respect

to a protected cell to such protected cell. The performance under such reinsurance contract and any tax benefits, losses, refunds, or credits allocated pursuant to a tax allocation agreement to which the protected cell captive insurance company is a party, including any payments made by or due to be made to the protected cell captive insurance company pursuant to the terms of such agreement, shall reflect the insurance obligations, assets, and liabilities relating to the reinsurance contract that are attributed to such protected cell.

(k) In connection with the rehabilitation or liquidation of a protected cell or a protected cell captive insurance company, the assets and liabilities of a protected cell shall, to the extent the Commissioner determines they are separable, at all times be kept separate from and shall not be commingled with those of other protected cells and the protected cell captive insurance company's general account.

(l) Each protected cell captive insurance company shall annually file with the Commissioner such financial reports as required by the Commissioner. Any such financial report shall include without limitation a consolidating schedule detailing the financial experience of each protected cell.

(11) In lieu of filing a separate Statement of Actuarial Opinion for a protected cell captive insurance company and each protected cell, a protected cell captive insurance company may file a combined Statement of Actuarial Opinion which shall include a statement of actuarial opinion for each protected cell, and the core, if the core is retaining risk. The combined Statement of Actuarial Opinion shall include a supplemental schedule showing the loss and loss expense reserves for each protected cell, and the core, if the core is retaining risk. The loss and loss expense reserve reported in the supplemental schedule must equal the loss and loss expense reserve amount reported in the audited financial statement and the annual report submitted pursuant to this Part.

(m) Each protected cell captive insurance company shall notify the Commissioner in writing within 10 business days if the protected cell captive insurance company or any of its protected cells are impaired, insolvent, or otherwise unable to meet its claim or expense obligations.

(n) No participant contract shall take effect without the Commissioner's prior written approval. The addition of each new protected cell, the withdrawal of any participant, or the termination of any existing protected cell shall constitute a change in the plan of operation requiring the Commissioner's prior written approval.

(o) If required by the Commissioner, the business written by a protected cell captive insurance company, with respect to each protected cell shall be:

- (1) Fronted by an insurance company approved by the Commissioner.
- (2) Reinsured by a reinsurer approved by the Commissioner.
- (3) Secured by a trust fund in the United States for the benefit of policyholders and claimants, funded by an irrevocable letter of credit, or other arrangement that is acceptable to the Commissioner. The Commissioner may require the protected cell captive insurance company to increase the funding of any security arrangement established under this subdivision. If the form of security is a letter of credit, the letter of credit shall be issued by a bank approved by the Commissioner. A trust

maintained pursuant to this subdivision shall be established in a form and upon such terms approved by the Commissioner.

(p) Notwithstanding this Chapter or other laws of this State, and in addition to G.S. 58-10-525, in the event of an insolvency of a protected cell captive insurance company where the Commissioner determines that one or more protected cells remain solvent, the Commissioner may separate such cells from the protected cell captive insurance company and may allow, on application of the protected cell captive insurance company or a protected cell's participant, for the conversion or transfer of such protected cells into one or more new or existing protected cell captive insurance companies, or one or more other captive insurance companies, pursuant to such plan or plans of operation as the Commissioner deems acceptable.

(q) A protected cell of a protected cell captive insurance company may be transferred to another protected cell captive insurance company or may be converted into another captive insurance company upon the approval of a transfer agreement or conversion plan by the Commissioner. All assets and liabilities of the protected cell immediately before the transfer or conversion shall remain the assets and liabilities after the transfer or conversion. All actions and other legal proceedings which were pending by or against the protected cell immediately prior to the transfer or conversion may be continued by or against the protected cell or the captive insurance company into which the protected cell converts.

(r) A protected cell of a protected cell captive insurance company may enter into a contract with its protected cell captive insurance company or with another protected cell of the protected cell captive insurance company that shall be enforceable as if each protected cell of the protected cell captive insurance company were a separate legal entity, even if the protected cell is not organized as an incorporated protected cell. (2013-116, s. 1; 2014-65, s. 16; 2015-99, s. 1; 2016-78, s. 4.1(t).)

§ 58-10-512. Incorporated protected cells.

(a) A protected cell of a protected cell captive insurance company may be formed as an incorporated protected cell.

(b) The articles of incorporation or articles of organization of an incorporated protected cell shall refer to the protected cell captive insurance company for which it is a protected cell and shall state that the protected cell is incorporated or organized for the limited purposes authorized by the protected cell captive insurance company's license.

(c) An incorporated protected cell may be organized and operated in any form of business organization authorized by the Commissioner. Unless otherwise permitted by the organizational documents of a protected cell captive insurance company, each incorporated protected cell of the protected cell captive insurance company must have the same directors, secretary, and registered office as the protected cell captive insurance company.

(d) In addition to the information required to be filed pursuant to G.S. 58-10-510(a)(1), a protected cell captive insurance company shall meet the requirements of G.S. 58-10-345(c)(1) for each incorporated protected cell. Other documents related to

the incorporated protected cell shall be filed with the Commissioner as required before issuing policies of insurance.

(e) It is the intent of the General Assembly under this section to provide protected cell captive insurance companies with the option to establish one or more protected cells as a separate corporation or other legal entity. This section shall not be construed to limit any rights or protections applicable to protected cells that are not incorporated protected cells.

(f) Subject to the prior written approval of the protected cell captive insurance company and of the Commissioner, an incorporated protected cell shall be entitled to enter into contracts and undertake obligations in its own name and for its own account. In the case of a contract or obligation to which the protected cell captive insurance company is not a party, either in its own name and for its own account or on behalf of a protected cell, the counterparty to the contract or obligation shall have no right or recourse against the protected cell captive insurance company and its assets other than against assets properly attributable to the incorporated protected cell that is a party to the contract or obligation. (2015-99, s. 1.)

§ 58-10-513. Cell shares and cell dividends.

(a) A protected cell captive insurance company may create and issue shares from any of its protected cells, the proceeds of which shall be included in the assets attributable to the cell from which the cell shares were issued.

(b) The proceeds of the issue of shares other than cell shares created and issued by a protected cell captive insurance company shall be included in the protected cell captive insurance company's general account.

(c) A protected cell captive insurance company may pay dividends to cell shareholders from assets attributable to such cell in accordance with the provisions of G.S. 58-10-375. (2015-99, s. 1.)

§ 58-10-515. Participants in a protected cell captive insurance company.

(a) Any person may be a participant in a protected cell captive insurance company formed or licensed under this Part.

(b) A sponsor may be a participant in a protected cell captive insurance company.

(c) A participant need not be a shareholder of the protected cell captive insurance company or any affiliate thereof.

(d) Except as otherwise approved by the Commissioner, a participant shall insure only its own risks and the risks of its affiliates through a protected cell captive insurance company. (2013-116, s. 1; 2015-99, s. 1; 2016-78, s. 4.1(u).)

§ 58-10-517. Company to inform persons they are dealing with protected cell captive insurance company.

A protected cell captive insurance company shall inform any person with whom it transacts business that it is a protected cell captive insurance company, and for the purposes of that transaction, identify or specify the protected cell with which that person is

transacting, unless that transaction is not a transaction with a particular protected cell, in which case it shall specify that the transaction is with the protected cell captive insurance company's core. (2015-99, s. 1.)

§ 58-10-520. Combining assets of protected cells.

Notwithstanding G.S. 58-10-510, the assets of two or more protected cells may be combined for purposes of investment and such combination shall not be construed as defeating the segregation of such assets for accounting or other purposes. (2013-116, s. 1; 2014-65, s. 17.)

§ 58-10-525. Application of supervision, rehabilitation, and liquidation provisions to protected cell captive insurance companies.

(a) Except as otherwise provided in this Part, Article 30 of this Chapter shall apply to a protected cell captive insurance company and to each protected cell of a protected cell captive insurance company.

(b) Upon any order of supervision, rehabilitation, or liquidation of a protected cell or a protected cell captive insurance company, the Commissioner or receiver shall manage the assets and liabilities of the protected cell captive insurance company, including assets and liabilities attributed to protected cells, pursuant to this Part.

(c) Notwithstanding Article 30 of this Chapter:

(1) No assets of a protected cell shall be used to pay any expenses or claims other than those attributable to such protected cell.

(2) Subject to G.S. 58-10-512(f), a protected cell captive insurance company's capital and surplus shall at all times be available to pay any expenses of, or claims against, the protected cell captive insurance company. (2013-116, s. 1; 2015-99, s. 1; 2016-78, s. 4.1(v).)

Subpart 3. Branch Captive Insurance Companies.

§ 58-10-530. Establishment of branch captive insurance companies.

(a) A branch captive insurance company may be established in this State, in accordance with this Subpart, to write in this State any insurance or reinsurance of the employee benefit business of its parent and affiliated companies that is subject to the Employee Retirement Income Security Act of 1974, as amended, or any insurance or reinsurance permitted to be written by captive insurance companies pursuant to this Part.

(b) No branch captive insurance company shall do any insurance business in this State unless it maintains the principal place of business for its branch operations in this State. (2013-116, s. 1.)

§ 58-10-535. Security for payment of branch captive insurance company liabilities.

(a) No branch captive insurance company shall be issued a license by the Commissioner unless it possesses and maintains as security for the payment of liabilities attributable to the branch operations:

- (1) An amount equal to the amount set forth in G.S. 58-10-370 as the minimum capital requirement for a pure captive insurance company.
 - (2) Reserves on such insurance policies or such reinsurance contracts as may be issued or assumed by the branch captive insurance company through its branch operations, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, that the Commissioner may permit a branch captive insurance company to credit against any such reserve requirement any security for loss reserves that the branch captive insurance company may post with a ceding insurer or that may be posted by a reinsurer with the branch captive insurance company, and in either case if such security remains posted.
- (b) Subject to the prior approval of the Commissioner, the amounts required in subsection (a) of this section may be held in the form of:
- (1) A trust formed under a trust agreement and funded by assets acceptable to the Commissioner.
 - (2) An irrevocable letter of credit issued by a bank approved by the Commissioner.
 - (3) With respect to the amounts required in subdivision (a)(1) of this section only, cash on deposit with the Commissioner.
 - (4) Any combination of subdivisions (b)(1) through (3) of this section. (2013-116, s. 1; 2015-99, s. 1.)

§ 58-10-540: Repealed by Session Laws 2015-99, s. 1, effective June 19, 2015.

§ 58-10-545. Filing of reports and statements.

Prior to March 1 of each year, or with the approval of the Commissioner within 60 days after its fiscal year-end, a branch captive insurance company shall file with the Commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of two of its executive officers. If the Commissioner is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the Commissioner may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction. (2013-116, s. 1.)

§ 58-10-550. Audit of a branch captive insurance company.

(a) Any audit of a branch captive insurance company pursuant to G.S. 58-10-430 shall be of branch business and branch operations only so long as the branch captive insurance company files annually with the Commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the

branch captive insurance company is formed, and demonstrates to the Commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

(b) As a condition of licensure, an alien captive insurance company shall grant authority to the Commissioner for audit of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed. (2013-116, s. 1; 2016-78, s. 4.1(w).)

Subpart 4. Special Purpose Financial Captives.

§ 58-10-555. Creation of special purpose financial captives.

Special purpose financial captives (SPFCs) are provided by this Subpart exclusively to facilitate the securitization of one or more risks as a means of accessing alternative sources of capital and achieving the benefits of securitization. SPFCs are created for the limited purpose of entering into SPFC contracts and insurance securitization transactions and into related agreements to facilitate the accomplishment and execution of those transactions. The creation of SPFCs is intended to achieve greater efficiencies in structuring and executing insurance securitizations, to diversify and broaden sources of capital for insurers, to facilitate access for many insurers to insurance securitization and capital markets financing technology, and to further the economic development and expand the interest of this State through its captive insurance program. (2013-116, s. 1.)

§ 58-10-560. Controlling provisions when conflict exists; exemptions.

(a) No provisions of this Chapter, other than those expressly provided in this Part, shall apply to an SPFC. If any conflict occurs in this Part related to an SPFC, the provisions of this Subpart shall control.

(b) The Commissioner may exempt an SPFC or its protected cells, on a case-by-case basis, from this Part if the Commissioner determines regulation under this Part to be inappropriate given the nature of the risks to be insured. (2013-116, s. 1; 2015-99, s. 1.)

§ 58-10-565. Application requirements.

(a) An SPFC, when permitted by its organizational documents, may apply to the Commissioner for a certificate of authority to transact insurance or reinsurance business as authorized by this Part. An SPFC shall only insure or reinsure the risks of its counterparty. Notwithstanding any other provision of this Part, an SPFC may purchase reinsurance to cede the risks assumed under the SPFC contract as approved by the Commissioner.

(b) To transact business in this State, an SPFC shall:

- (1) Comply with the procedures established in G.S. 58-10-345(c).
- (2) Obtain from the Commissioner a certificate of authority authorizing it to conduct insurance or reinsurance business, or both, in this State.
- (3) Hold at least one management meeting each year in this State. For the purposes of this section, management is defined as the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the SPFC, including

the election and appointment of officers or other of those agents to act on behalf of the SPFC.

- (4) Maintain its principal place of business in this State.
 - (5) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this State. If the registered agent, with reasonable diligence, is not found at the registered office of the SPFC, the Commissioner shall be an agent of the SPFC upon whom any process, notice, or demand may be served.
 - (6) Provide such documentation of the insurance securitization as requested by the Commissioner immediately upon closing of the transaction, including:
 - a. An opinion of a duly licensed North Carolina legal counsel with respect to compliance with this Part and any other applicable laws as of the effective date of the transaction.
 - b. A statement under oath of its president and secretary demonstrating its financial condition.
 - (7) Provide a complete set of the documentation of the insurance securitization to the Commissioner immediately following closing of the transaction.
- (c) A complete SPFC application shall include the following:
- (1) A certified copy of the SPFC's organizational documents.
 - (2) Evidence of:
 - a. The amount and liquidity of its assets relative to the risks to be assumed.
 - b. The adequacy of the expertise, experience, and character of the person or persons who manage the SPFC.
 - c. The overall soundness of the SPFC's plan of operation.
 - d. Other factors considered relevant by the Commissioner in ascertaining whether the proposed SPFC is able to meet its policy obligations.
 - e. The applicant SPFC's financial condition, including the source and form of the minimum capital to be contributed to the SPFC.
 - (3) A plan of operation consisting of a description of or statement of intent with respect to the contemplated insurance securitization, the SPFC contract, and related transactions, which shall include:
 - a. Draft documentation or, at the discretion of the Commissioner, a written summary of all material agreements that are entered into to effectuate the SPFC contract and, before the effectuation of the SPFC contract, the insurance securitization, to include the names of the counterparty, the nature of the risks being assumed, the proposed use of protected cells, if any, and the maximum amounts, purpose, and nature and the interrelationships of the various transactions required to effectuate the insurance securitization.
 - b. The source and form of additional capital to be contributed to the SPFC.
 - c. The proposed investment strategy of the SPFC.

- d. A description of the underwriting, reporting, and claims payment methods by which losses covered by the SPFC contract are reported, accounted for, and settled.
 - e. A pro forma balance sheet and income statement illustrating various stress case scenarios for the performance of the SPFC under the SPFC contract.
 - (4) Biographical affidavits in NAIC format of all of the prospective SPFC's officers and directors, providing the officers' and directors' legal names, any names under which they have or are conducting their affairs, and any other biographical information as the Commissioner may request.
 - (5) An affidavit from the applicant SPFC verifying:
 - a. The applicant SPFC complies with this Part.
 - b. The applicant SPFC operates only pursuant to this Part.
 - c. The applicant SPFC's investment strategy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and asset management of such assets relative to the risks associated with the SPFC contract and the insurance securitization transaction.
 - d. The securities proposed to be issued, if any, are valid legal obligations that are either properly registered or constitute an exempt security or form part of an exempt transaction.
 - (6) Any other statements or documents required by the Commissioner to evaluate and complete the licensing of the SPFC.
- (d) In addition to the information required by subsection (c) of this section and by G.S. 58-10-585, when a protected cell is used, an applicant SPFC shall file with the Commissioner:
- (1) A business plan demonstrating how the applicant SPFC accounts for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the Commissioner and how the applicant will report the experience to the Commissioner.
 - (2) A statement acknowledging that all records of the SPFC, including records pertaining to any protected cells, must be made available for inspection or audit by the Commissioner.
 - (3) All contracts or sample contracts between the SPFC and any counterparty related to each protected cell.
 - (4) A description of the expenses allocated to each protected cell.
- (e) Information submitted pursuant to this section shall be and remain confidential, and shall not be made public by the Commissioner or the Commissioner's designee unless disclosure is ordered by a court of competent jurisdiction. In addition, the Commissioner shall have the discretion to disclose such information to a public official having jurisdiction over the regulation of insurance in another state, provided that:
- (1) Such public official shall agree in writing to maintain the confidentiality of such information.
 - (2) The laws of the state in which such public official serves require such information to be and to remain confidential.

(f) G.S. 58-10-430 applies to SPFCs.

(g) SPFCs are subject to any rules or regulations promulgated pursuant to G.S. 58-10-460.

(h) The Commissioner may retain legal, financial, and audit services from outside the Department to audit and investigate the application, the cost of which may be charged against the applicant. The Commissioner also may use internal resources to audit and investigate the application based upon an hourly rate for the services performed or the usual and customary fee charged by the financial services industry for similar work subject to a minimum fee of twelve thousand dollars (\$12,000), six thousand dollars (\$6,000) of which is payable upon filing of the application and the remainder upon licensure.

(i) An SPFC shall be subject to payment of premium taxes as required by G.S. 58-10-455.

(j) The Commissioner shall grant a certificate of authority authorizing the SPFC to transact insurance or reinsurance business as an SPFC in this State, upon a finding by the Commissioner that:

- (1) The SPFC's proposed plan of operation provides a reasonable and expected successful operation.
- (2) The terms of the SPFC contract and related transactions comply with this Part.
- (3) The proposed plan of operation is not hazardous to any counterparty.
- (4) To the extent required by law or regulation, the Commissioner or an equivalent regulatory authority of the state of domicile of each counterparty has notified the Commissioner in writing or otherwise provided assurance satisfactory to the Commissioner that it has approved or not disapproved the transaction.
- (5) The certificate of authority authorizing the SPFC to transact business is limited only to the insurance or reinsurance activities that the SPFC is authorized to conduct pursuant to this Part.

(k) In evaluating the expectation of a successful operation, factors the Commissioner shall consider include whether the proposed SPFC and its management are of known good character and reasonably believed not to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations, with a person known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

(l) To minimize the likelihood that the proposed plan of operation is hazardous to any counterparty, the Commissioner may require reasonable safeguards in the SPFC's plan of operation where applicable and appropriate in the circumstance, including, without limitation, that certain assets of the SPFC be held in a trust to secure the obligations of the SPFC to a counterparty under an SPFC contract.

(m) A foreign or alien corporation or limited liability company, upon approval of the Commissioner, may become a domestic SPFC after complying with G.S. 58-10-345(c)(1). After such documents are successfully filed, the foreign or alien corporation or limited liability company is entitled to the necessary or appropriate certificates or licenses to

transact business as an SPFC in this State and is subject to the authority and jurisdiction of this State. In connection with this redomestication, the Commissioner may waive any requirements for public hearings. It is not necessary for a corporation or limited liability company redomesticating into this State to merge, consolidate, transfer assets, or otherwise engage in another reorganization, other than as specified in this section. (2013-116, s. 1; 2014-65, s. 18; 2015-99, s. 1; 2016-78, s. 4.1(x).)

§ 58-10-570. Organization of an SPFC.

(a) An SPFC may be established as a stock corporation, limited liability company, mutual, partnership, or other form of organization approved by the Commissioner.

(b) The SPFC's organizational documents shall limit the SPFC's authority to transact the business of insurance or reinsurance to those activities the SPFC conducts to accomplish its purpose as expressed in this Part.

(c) The SPFC shall not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for another existing business name registered in this State. Any name adopted by an SPFC shall comply with State law.

(d) An SPFC shall have at least three incorporators or organizers, of whom at least two shall be residents of this State.

(e) At least one of the members of the management of the SPFC shall be a resident of this State.

(f) An SPFC formed pursuant to this Part has the privileges of and is subject to all other requirements of this State's law applicable to its formation, as well as the applicable provisions contained in this Part, provided that this Part controls if a conflict exists in this State's law. (2013-116, s. 1.)

§ 58-10-575. Minimum capital.

(a) An SPFC shall initially possess and maintain minimum capital of not less than two hundred and fifty thousand dollars (\$250,000). All of the minimum initial capitalization shall be in cash. All other funds of the SPFC in excess of its minimum initial capitalization shall be in the form of cash, cash equivalent, or securities invested as approved by the Commissioner.

(b) Additional capitalization for the SPFC shall be determined, if so required, by the Commissioner after giving due consideration to the SPFC's plan of operation, feasibility study, pro formas, and the nature of the risks being insured or reinsured, which may be prescribed in formulas approved by the Commissioner. (2013-116, s. 1.)

§ 58-10-580. Authorized activities.

(a) An SPFC shall only insure the risks of a counterparty.

(b) No SPFC shall issue a contract for assumption of risk or indemnification of loss other than an SPFC contract. However, the SPFC may cede risks assumed through an SPFC contract to third-party reinsurers through the purchase of reinsurance or retrocession protection on terms approved by the Commissioner.

(c) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the SPFC contract, insurance securitization, and this Part. Those activities may include, but are not limited to:

- (1) Entering into SPFC contracts.
- (2) Issuing SPFC securities in accordance with applicable securities law.
- (3) Complying with the terms of such contracts or securities.
- (4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax, administration, reimbursement, or fiscal agent transactions.
- (5) Complying with trust indenture, reinsurance, or retrocession, and agreements necessary or incidental to effectuate an insurance securitization in compliance with this Part or the plan of operation approved by the Commissioner.

(d) An SPFC shall do all of the following:

- (1) Discount its reserves at discount rates as approved by the Commissioner.
- (2) Maintain reserves that are actuarially sufficient to support the liabilities incurred by an SPFC in reinsuring life insurance policies.
- (3) File annually with the Commissioner an actuarial opinion on reserves provided by an approved independent actuary. (2013-116, s. 1.)

§ 58-10-585. Establishment of protected cell accounts.

(a) This section and G.S. 58-10-590 provide a basis for the creation and use of protected cells by an SPFC as a means of accessing alternative sources of capital, lowering formation and administrative expenses, and generally making insurance securitizations more efficient. If a conflict exists between other provisions of this Part and either this section or G.S. 58-10-590, then this section or G.S. 58-10-515 shall control as applicable.

(b) An SPFC may establish and maintain one or more protected cells with prior written approval of the Commissioner and subject to compliance with the applicable provisions of this Part and all of the following conditions:

- (1) A protected cell shall be established only for the purpose of insuring or reinsuring risks of one or more SPFC contracts with a counterparty with the intent of facilitating an insurance securitization.
- (2) Each protected cell shall be accounted for separately on the books and records of the SPFC to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to the counterparty for the SPFC contract with each cell, and other factors as may be provided in the SPFC contract, insurance securitization transaction documents, plan of operation, or business plan, or as required by the Commissioner.
- (3) Amounts attributed to a protected cell under this Part, including assets transferred to a protected cell account, are owned by the SPFC, and no SPFC shall be or hold itself out to be a trustee with respect to those protected cell assets of that protected cell account.

- (4) All attributions of assets and liabilities between a protected cell and the general account shall be in accordance with the plan of operation approved by the Commissioner, and no other attribution of assets or liabilities by an SPFC between the SPFC's general account and its protected cell or cells is permitted. The SPFC shall attribute all insurance obligations, assets, and liabilities relating to an SPFC contract and the related insurance securitization transaction, including any securities issued by the SPFC as part of the insurance securitization, to a particular protected cell. The insurance obligations, assets, and liabilities relating to the SPFC contract and the insurance securitization transaction that are attributed to a particular protected cell shall be consistent with:
 - a. The rights, benefits, obligations, and liabilities of any securities attributable to that protected cell.
 - b. The performance under an SPFC contract and the related securitization transaction and any tax benefits, losses, refunds, or credits allocated, at any point in time pursuant to a tax allocation agreement between the SPFC and the SPFC's counterparty, parent, or company or group company, or any of them, in common control with them, as the case may be, including any payments made by or due to be made to the SPFC pursuant to the terms of the agreement.
- (5) No assets of a protected cell shall be chargeable with liabilities arising out of an SPFC contract related to or associated with another protected cell. However, one or more SPFC contracts may be attributed to a protected cell only if the SPFC contracts are intended to be and ultimately are part of a single securitization transaction.
- (6) No sale, exchange, or other transfer of assets shall be made by the SPFC between or among any of the SPFC's protected cells without the consent of the Commissioner, counterparty, and each protected cell.
- (7) Except as otherwise contemplated in the SPFC contract or related insurance securitization transaction documents, or both, no sale, exchange, transfer of assets, dividend, or distribution shall be made from a protected cell to a counterparty or parent without the Commissioner's approval and the sale, exchange, transfer, dividend, or distribution shall not be approved if the sale, exchange, transfer, dividend, or distribution would result in a protected cell's insolvency or impairment.
- (8) An SPFC may pay interest or repay principal, or both, and make distributions or repayments with respect to any securities attributed to a particular protected cell from assets or cash flows relating to or emerging from the SPFC contract and the insurance securitization transactions that are attributable to that particular protected cell in accordance with this Part, or as otherwise approved by the Commissioner.

(c) No SPFC contract with or attributable to a protected cell shall take effect without the Commissioner's prior written approval, and the addition of each new protected cell constitutes a change in the business plan requiring the Commissioner's prior written

approval. The Commissioner may retain legal, financial, and audit services from outside the Department to audit and investigate the application for a protected cell, the cost of which may be charged against the applicant, or the Commissioner may use internal resources to audit and investigate the application, the cost of which may be charged against the applicant, or both.

(d) An SPFC utilizing protected cells shall possess and maintain minimum capitalization separate and apart from the capitalization of its protected cell or cells in an amount determined by the Commissioner after giving due consideration of the SPFC's business plan, feasibility study, and pro formas, including the nature of the risks to be insured or reinsured. For purposes of determining the capitalization of each protected cell, an SPFC shall initially capitalize and maintain capitalization in each protected cell in the amount and manner required for an SPFC in G.S. 58-10-575.

(e) The establishment of one or more protected cells alone shall not constitute and shall not be deemed to be a fraudulent conveyance, an intent by the SPFC to defraud creditors, or the carrying out of business by the SPFC for any other fraudulent purpose. (2013-116, s. 1; 2016-78, s. 4.1(y).)

§ 58-10-590. Protected cell accounts.

(a) All of the following shall apply to a protected cell:

- (1) The creation of a protected cell shall not create, with respect to that protected cell, a legal person separate from the SPFC.
- (2) Notwithstanding subdivision (a)(1) of this subsection, a protected cell shall have its own distinct name or designation that includes the words "protected cell." The SPFC shall transfer all assets attributable to the protected cell to one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.
- (3) Although a protected cell is not a separate legal person, the property of an SPFC in a protected cell is subject to orders of the court by name as the property would have been if the protected cell were a separate legal person.
- (4) The property of an SPFC in a protected cell shall be served with process in its own name in all civil actions or proceedings involving or relating to the activities of that protected cell or a breach by the SPFC of a duty to the protected cell or to a counterparty to a transaction linked or attributed to it by serving the SPFC.
- (5) A protected cell exists only at the pleasure of the SPFC. At the cessation of business of a protected cell in accordance with the plan approved by the Commissioner, the SPFC shall close out the protected cell account.

(b) Nothing in this section shall be construed to prohibit an SPFC from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the assets of a protected cell, if all remuneration, expenses, and other compensation of the third-party advisor or manager are payable from the assets of that

protected cell and not from the assets of other protected cells or the assets of the SPFC's general account, unless approved by the Commissioner.

(c) Creditors with respect to a protected cell are not entitled to have recourse against the protected cell assets of other protected cells or the assets of the SPFC's general account. If an obligation of an SPFC relates only to the general account, the obligation of the SPFC extends only to that creditor with respect to that obligation, and the creditor is entitled to have recourse only to the assets of the SPFC's general account.

(d) The assets of the protected cell shall not be used to pay expenses or claims other than those attributable to the protected cell. Protected cell assets are available only to the SPFC contract counterparty and other creditors of the SPFC that are creditors only with respect to that protected cell and, accordingly, are entitled in conformity with this Part, to have recourse to the protected cell assets attributable to that protected cell. The assets of the protected cell are protected from the creditors of the SPFC that are not creditors with respect to that protected cell and who, accordingly, are not entitled to have recourse to the protected cell assets attributable to that protected cell. If an obligation of an SPFC to a person or counterparty arises from an SPFC contract or related insurance securitization transaction, or is otherwise incurred with respect to a protected cell, then the obligation shall:

- (1) Extend only to the protected cell assets attributable to that protected cell, and the person or counterparty, with respect to that obligation, is entitled to have recourse only to the protected cell assets attributable to that protected cell.
- (2) Not extend to the protected cell assets of another protected cell or the assets of the SPFC's general account, and the person or counterparty, with respect to that obligation, is not entitled to have recourse to the protected cell assets of another protected cell or the assets of the SPFC's general account. The SPFC's capitalization held separate and apart from the capitalization of its protected cell or cells must be available at all times to pay expenses of or claims against the SPFC and may not be used to pay expenses or claims attributable to any protected cell.

(e) Notwithstanding any other provision of law, an SPFC may allow for a security interest in accordance with applicable law to attach to protected cell assets or a protected cell account when in favor of a creditor of the protected cell or to facilitate an insurance securitization, including, without limitation, the issuance of the SPFC contract, to the extent those protected cell assets are not required at all times to support the risk, but without otherwise affecting the discharge of liabilities under the SPFC contract, or as otherwise approved by the Commissioner.

(f) An SPFC shall establish administrative and accounting procedures necessary to properly identify the one or more protected cells of the SPFC and the protected cell assets and protected cell liabilities to each protected cell. An SPFC shall keep protected cell assets and protected cell liabilities:

- (1) Separate and separately identifiable from the assets and liabilities of the SPFC's general account.

- (2) Attributable to one protected cell separate and separately identifiable from protected cell assets and protected cell liabilities attributable to other protected cells.

(g) All contracts or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all SPFC insurance securitizations involving a protected cell, the contracts or other documentation effecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation shall clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection, and subject to this Part and other applicable laws or regulations, the failure to include this language in the contracts or other documentation shall not be used as the sole basis by creditors, insureds or reinsureds, insurers or reinsurers, or other claimants to circumvent the provisions of this section.

(h) An SPFC with protected cells shall annually file with the Department accounting statements and financial reports required by this Part, which shall:

- (1) Detail the financial experience of each protected cell and the SPFC separately.
- (2) Provide the combined financial experience of the SPFC and all protected cells.

(i) An SPFC with protected cells shall notify the Commissioner in writing within 10 business days of a protected cell becoming insolvent. (2013-116, s. 1.)

§ 58-10-595. Issuing securities.

(a) An SPFC may issue securities, including surplus notes and other forms of financial instruments, subject to and in accordance with applicable law, its approved plan of operation, and its organizational documents.

(b) An SPFC, in connection with the issuance of securities, may enter into and perform all of its obligations under any required contracts to facilitate the issuance of these securities.

(c) Subject to the approval of the Commissioner, an SPFC may lawfully:

- (1) Account for the proceeds of surplus notes as surplus and not as debt for purposes of statutory accounting.
- (2) Submit for prior approval of the Commissioner periodic written requests for payments of interest on and repayments of principal of surplus notes. In lieu of approval of periodic written requests for authorization to make payments of interest on and repayments of principal of surplus notes and other debt obligations issued by the SPFC, the Commissioner may approve a formula or plan, which shall be included in the SPFC's plan of operation as amended from time to time, for payment of interest, principal, or both, with respect to such surplus notes and debt obligations.

(d) The Commissioner, without otherwise prejudicing the Commissioner's authority, may approve formulas for an ongoing plan of interest payments or principal

repayments, or both, to provide guidance in connection with the Commissioner's ongoing reviews of requests to approve the payments on and principal repayments of the surplus notes.

(e) The obligation to repay principal or interest, or both, on the securities issued by the SPFC must reflect the risk associated with the obligations of the SPFC to the counterparty under the SPFC contract. (2013-116, s. 1.)

§ 58-10-600. Asset management agreements.

An SPFC may enter into swap agreements, or other forms of asset management agreements, including guaranteed investment contracts, or other transactions that have the objective of leveling timing differences in funding of up-front or ongoing transaction expenses, or managing asset, credit, or interest rate risk of the investments to minimize the likelihood that the investments are not sufficient to assure payment or repayment of the securities, and related interest or principal payments, issued pursuant to an SPFC insurance securitization transaction, or the obligations of the SPFC under the SPFC contract. (2013-116, s. 1; 2015-99, s. 1.)

§ 58-10-605. Reinsurance.

(a) An SPFC may reinsure only the risks of a ceding insurer pursuant to a reinsurance contract. No SPFC shall issue a contract of insurance or a contract for assumption of risk or indemnification of loss other than such reinsurance contract.

(b) Unless otherwise approved in advance by the Commissioner, no SPFC shall assume or retain exposure to insurance or reinsurance losses for its own account that are not funded by:

- (1) Proceeds from an insurance securitization, letters of credit, or other assets described in G.S. 58-10-340(22).
- (2) Premium and other amounts payable by the ceding insurer to the SPFC pursuant to the reinsurance contract.
- (3) Any return on investment of the items described in subdivisions (1) and (2) of this subsection.

(c) The reinsurance contract shall contain all provisions required or approved by the Commissioner, which requirements shall take into account the laws applicable to the ceding insurer regarding the ceding insurer taking credit for the reinsurance provided under such reinsurance contract.

(d) An SPFC may cede risks assumed through a reinsurance contract to one or more reinsurers through the purchase of reinsurance, subject to the prior approval of the Commissioner.

(e) An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of the reinsurance contract, the insurance securitization, and this Part, provided such contracts and activities are included in the SPFC's plan of operation or are otherwise approved in advance by the Commissioner. Such contracts and activities may include the following:

- (1) Entering into SPFC contracts.

- (2) Issuing SPFC securities in accordance with applicable securities law.
- (3) Complying with the terms of such contracts or securities.
- (4) Entering into trust, guaranteed investment contract, letter of credit, swap, tax, administration, reimbursement, or fiscal agent transactions.
- (5) Complying with trust indenture, reinsurance, or retrocession and other agreements necessary or incidental to effectuate an insurance securitization in compliance with this Part or the plan of operation approved by the Commissioner.

(f) Unless otherwise approved in advance by the Commissioner, a reinsurance contract shall not contain any provision for payment by the SPFC in discharge of its obligations under the reinsurance contract to any person other than the ceding insurer or any receiver of the ceding insurer.

(g) An SPFC shall notify the Commissioner immediately of any action by a ceding insurer or any other person to foreclose on or otherwise take possession of collateral provided by the SPFC to secure any obligation of the SPFC.

(h) In the SPFC insurance securitization, the contracts or other relating documentation shall contain provisions identifying the SPFC.

(i) Unless otherwise approved by the Commissioner, no SPFC shall enter into an SPFC contract with a person that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile.

(j) No SPFC shall:

- (1) Have any direct obligation to the policyholders or reinsureds of the counterparty.
- (2) Perform any of the following activities with anyone convicted of a felony, anyone who is untrustworthy or of known bad character, or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation, or corruption:
 - a. Lend or otherwise invest assets.
 - b. Place any assets in custody, trust, or under management.
 - c. Borrow money or receive a loan or advance, other than by issuance of the securities pursuant to an insurance securitization. (2013-116, s. 1.)

§ 58-10-610. No securities considered to be insurance or reinsurance contracts.

No securities issued by an SPFC pursuant to an insurance securitization shall be considered to be insurance or reinsurance contracts. No investor in these securities or a holder of these securities, by sole means of this investment or holding, shall be considered to be transacting the business of insurance in this State. The underwriter's placement or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization pursuant to this Part shall not be considered to be insurance producers or brokers or conducting business as an insurance or reinsurance company or agency, brokerage, intermediary,

advisory, or consulting business only by virtue of their activities in connection with an insurance securitization. (2013-116, s. 1.)

§ 58-10-615. Disposition of assets; investment limitations.

(a) The assets of an SPFC shall be preserved and administered by or on behalf of the SPFC to satisfy the liabilities and obligations of the SPFC incident to the reinsurance contract, the insurance securitization, and other related agreements.

(b) In the insurance securitization, the security offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other security shall include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the SPFC's obligations to the ceding insurer.

(c) No SPFC shall be subject to any restriction on investments other than the following:

- (1) The Commissioner may limit investments by an SPFC to those categories and amounts of authorized investments delineated in G.S. 58-7-167, 58-7-170, 58-7-172, 58-7-173, 58-7-178, 58-7-179, 58-7-180, 58-7-183, 58-7-185, 58-7-187, 58-7-188, 58-7-192, 58-7-193, 58-7-197, 58-7-200, and 58-7-205, as applicable and as amended from time to time.
- (2) No SPFC shall make a loan to any person other than as permitted under its plan of operation or as otherwise approved in advance by the Commissioner.
- (3) The Commissioner may prohibit or limit any investment that threatens the solvency or liquidity of the SPFC unless the investment is otherwise approved by the Commissioner in writing. (2013-116, s. 1.)

§ 58-10-620. Dividends.

(a) No SPFC shall declare or pay dividends in any form to its owners other than in accordance with the insurance securitization transaction agreements, and in no extent shall the dividends decrease the capital of the SPFC below two hundred fifty thousand dollars (\$250,000). After giving effect to the dividends, the assets of the SPFC, including assets held in trust pursuant to the terms of the insurance securitization, shall be sufficient to satisfy the Commissioner that the SPFC can meet its obligations. Approval by the Commissioner of an ongoing plan for the payment of dividends or other distribution by an SPFC must be conditioned upon the retention at the time of each payment of capital or surplus equal to or in excess of amounts specified by or determined in accordance with formulas approved for the SPFC by the Commissioner.

(b) The dividends may be declared by the management of the SPFC if the dividends do not violate this Part or jeopardize the fulfillment of the obligations of the SPFC or the trustee pursuant to the SPFC insurance securitization agreements, the SPFC contract, or any related transaction and other provisions of this Part. (2013-116, s. 1.)

§ 58-10-625. Changes in plan of operation; filing of audit and statement of operation; audits.

(a) Any material change of the SPFC's plan of operation, whether or not through an SPFC protected cell, shall require prior approval of the Commissioner. The following transactions do not constitute material change for purposes of this section:

- (1) If initially approved in the plan of operation, securities subsequently issued to continue the securitization activities of the SPFC either during or after expiration, redemption, or satisfaction of all of these, of part or all of the securities issued pursuant to initial insurance securitization transactions.
- (2) A change and substitution in a counterparty to a swap transaction for an existing insurance securitization as allowed pursuant to this Part if the replacement swap counterparty carries a similar or higher rating to its predecessor with two or more nationally recognized rating agencies.

(b) No later than six months after the fiscal year-end of the SPFC, the SPFC shall file with the Commissioner an audit by a certified public accounting firm of the financial statements of the SPFC and the trust accounts.

(c) Repealed by Session Laws 2014-65, s. 19, effective July 1, 2014.

(d) Each SPFC shall file by March 1 a report of its financial condition, using either generally accepted accounting principles or, if approved, accepted, or required by the Commissioner, statutory accounting principles with useful or necessary modifications or adaptations for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the Commissioner. The report shall include a statement of income, a balance sheet, and may include a detailed listing of invested assets, including identification of assets held in trust to secure the obligations of the SPFC under the SPFC contract. The SPFC also may include with the filing risk-based capital calculations and other adjusted capital calculations to assist the Commissioner with evaluating the levels of the surplus of the SPFC for the year ending on December 31 of the previous year. The report shall be prepared on forms required by the Commissioner. In addition, the Commissioner may require the filing of performance assessments of the SPFC contract.

(e) An SPFC shall maintain the SPFC's records in this State unless otherwise approved by the Commissioner and shall make its records available for audit by the Commissioner at any time. The SPFC shall keep its books and records in such manner that its financial condition, affairs, and operations can be ascertained and so that the Commissioner may readily verify its financial statements and determine its compliance with this Part.

(f) All original books, records, documents, accounts, and vouchers shall be preserved and kept available in this State for the purpose of audit and until authority to destroy or otherwise dispose of the records is secured from the Commissioner. The original records, however, may be kept and maintained outside this State if, according to a plan adopted by the management of the SPFC and approved by the Commissioner, the SPFC maintains suitable copies instead of the originals. The books or records may be photographed, reproduced on film, or stored and reproduced electronically. (2013-116, s. 1; 2014-65, s. 19; 2016-78, s. 4.1(z).)

§ 58-10-630. Cessation of business.

At the cessation of business of an SPFC following termination or cancellation of an SPFC contract and the redemption of any related securities issued in connection with the SPFC contract, the authority granted by the Commissioner expires or, in the case of retiring and surviving protected cells, is modified, the SPFC is no longer authorized to conduct activities unless and until a new or modified certificate of authority is issued pursuant to a new filing under this Part or as agreed by the Commissioner. (2013-116, s. 1.)

§ 58-10-635. Supervision, rehabilitation, or liquidation of SPFC.

(a) Except as otherwise provided in this section, the terms and conditions set forth in Article 30 of this Chapter pertaining to supervision, rehabilitation, and liquidation of insurers apply in full to SPFCs or each of the SPFC's protected cells, independently, or both, without causing or otherwise effecting a supervision, rehabilitation, or liquidation of the SPFC or another protected cell.

(b) Notwithstanding the provisions of Article 30 of this Chapter, and without causing or otherwise effecting a rehabilitation or liquidation of an otherwise solvent protected cell of an SPFC and subject to the provisions of subdivision (g)(5) of this section, the Commissioner may apply by petition to the court for an order authorizing the Commissioner to rehabilitate or liquidate an SPFC domiciled in this State on one or more of the following grounds:

- (1) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities.
- (2) The SPFC is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities request or consent to rehabilitation or liquidation pursuant to the provisions of this Part.

(c) Notwithstanding the provisions of Article 30 of this Chapter, the Commissioner may apply by petition to the Court for an order authorizing the Commissioner to rehabilitate or liquidate one or more of an SPFC's protected cells independently, without causing or otherwise effecting a rehabilitation or liquidation of the SPFC generally or another of its protected cells on one or more of the following grounds:

- (1) There has been embezzlement, wrongful sequestration, dissipation, or diversion of the assets of the SPFC attributable to the affected protected cell or cells intended to be used to pay amounts owed to the counterparty or the holders of SPFC securities of the affected protected cell or cells.
- (2) The affected protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of SPFC securities attributable to that particular protected cell request or consent to rehabilitation or liquidation pursuant to the provisions of this Part.

(d) The Court may not grant relief provided by subdivision (b)(1) or (c)(1) of this section, unless after notice and a hearing, the Commissioner, who shall have the burden of proof, establishes by preponderance of the evidence that relief must be granted. The court's

order may be made with respect to one or more protected cells by name, rather than the SPFC generally.

(e) Notwithstanding another provision in this Chapter, rules adopted under this Chapter, or another applicable law or regulation, upon any order of rehabilitation or liquidation of a SPFC, or one or more of the SPFC's protected cells, the receiver shall manage the assets and liabilities of the SPFC pursuant to the provisions of this Part. The receiver shall ascertain that the assets linked to one protected cell are not applied to the liabilities linked to another protected cell or to the SPFC generally, unless an asset or liability is linked to more than one protected cell, in which case the receiver shall deal with the asset or liability in accordance with the terms of any relevant governing instrument or contract.

(f) With respect to amounts recoverable under an SPFC contract, the amount recoverable by the receiver must not be reduced or diminished as a result of the entry of an order of rehabilitation or liquidation with respect to the counterparty, notwithstanding another provision in the contracts or other documentation governing the SPFC insurance securitization.

(g) Notwithstanding the provisions of Article 30 of this Chapter or other laws of this State:

- (1) An application or petition, or a temporary restraining order or injunction issued pursuant to the provisions of Article 30 of this Chapter, with respect to a counterparty does not prohibit the transaction of a business by an SPFC, including any payment by an SPFC made pursuant to an SPFC security, or any action or proceeding against an SPFC or its assets.
- (2) The commencement of a summary proceeding or other interim proceeding commenced before a delinquency proceeding with respect to an SPFC, and any order issued by the court does not prohibit the payment by an SPFC made pursuant to an SPFC security, SPFC contract, or the SPFC from taking any action required to make the payment.
- (3) A receiver of a counterparty may not void a nonfraudulent transfer by a counterparty to an SPFC of money or other property made pursuant to an SPFC contract.
- (4) A receiver of an SPFC may not void a nonfraudulent transfer by the SPFC of money or other property made to a counterparty pursuant to an SPFC contract or made to or for the benefit of any holder of an SPFC security on account of the SPFC security.
- (5) The Commissioner may not seek to have an SPFC with protected cells declared insolvent as long as at least one of the SPFC's protected cells remains solvent, and in the case of such an insolvency, the receiver shall handle the SPFC's assets in compliance with subsection (e) of this section and other laws of this State.

(h) Subsection (g) of this section does not prohibit the Commissioner from taking any action permitted under Article 30 of this Chapter with respect only to the rehabilitation of an SPFC with protected cell or cells, provided the Commissioner would have had

sufficient grounds to seek to declare the SPFC insolvent, subject to and without otherwise affecting the provisions of subdivision (5) of subsection (g) of this section. In this case, with respect to the solvent protected cell or cells, the Commissioner may not prohibit payments made by the SPFC pursuant to the SPFC security, SPFC contract, or otherwise made under the insurance securitization transaction that are attributable to these protected cell or cells or prohibit the SPFC from taking any action required to make these payments.

(i) With the exception of the fulfillment of the obligations under an SPFC contract, and notwithstanding another provision of this Part or other laws of this State, the assets of an SPFC, including assets held in trust, must not be consolidated with or included in the estate of a counterparty in any delinquency proceeding against the counterparty, pursuant to the provisions of this Part for any purpose including, without limitation, distribution to creditors of the counterparty. (2013-116, s. 1; 2015-99, s. 1.)

Subpart 5. Other Provisions.

§ 58-10-650. Other laws applicable to captive insurance companies.

In addition to the statutes and laws previously referred to in this Part, the following provisions of this Chapter are applicable to all captive insurance companies subject to this Part:

- (1) G.S. 58-2-45. – Orders of Commissioner; when writing required.
- (2) G.S. 58-2-160. – Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.
- (3) G.S. 58-2-162. – Embezzlement by insurance agents, brokers, or administrators.
- (4) G.S. 58-2-185. – Record of business kept by companies and agents; Commissioner may inspect.
- (5) G.S. 58-2-190. – Commissioner may require special reports.
- (6) G.S. 58-2-195. – Commissioner may require records, reports, etc., for agencies, agents, and others.
- (7) G.S. 58-2-200. – Books and papers required to be exhibited.
- (8) G.S. 58-5-1. – Deposits; use of master trust.
- (9) G.S. 58-7-50. – Maintenance and removal of records and assets.
- (10) G.S. 58-7-55. – Exceptions to requirements of G.S. 58-7-50. (2013-116, s. 1.)

§ 58-10-655. Commissioner to share information with Department of Revenue.

Notwithstanding any other provisions of Chapter 58 of the General Statutes, the Commissioner may share confidential and privileged documents, materials, or information with the Department of Revenue. The documents, materials, or information shared shall be considered tax information and subject to the provisions of G.S. 105-259. (2015-99, s. 1.)

Part 10. Risk Management and Own Risk and Solvency Assessment.

§ 58-10-700. Purpose and scope.

(a) The purpose of this Part is to establish the requirements for maintaining a risk management framework and completing an Own Risk and Solvency Assessment (ORSA) and to establish guidance and instructions for filing an ORSA Summary Report with the Commissioner.

(b) The requirements of this Part shall apply to all insurers domiciled in this State unless exempt pursuant to G.S. 58-10-725. (2017-136, s. 1.)

§ 58-10-705. Definitions.

The following definitions apply in this Part:

- (1) Enterprise risk. – Defined in G.S. 58-19-5.
- (2) Insurance group. – Those insurers and affiliates included within an insurance holding company system as defined in G.S. 58-19-5.
- (3) Insurer. – Shall have the same meaning as set forth in G.S. 58-1-5 and includes a person subject to Article 65 or 67 of this Chapter. Insurer does not include an agency, authority, or instrumentality of the United States; any of its possessions and territories; the Commonwealth of Puerto Rico; the District of Columbia; nor a state or political subdivision of a state.
- (4) ORSA Guidance Manual. – The current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the NAIC and as amended from time to time. A change in the ORSA Guidance Manual shall be effective on January 1 of the year following the calendar year in which the changes have been adopted by the NAIC.
- (5) ORSA Summary Report. – A confidential high-level summary of an insurer or insurance group's ORSA, or a combination of reports, that contains the information described in the ORSA Guidance Manual.
- (6) Own Risk and Solvency Assessment or ORSA. – A confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan, and the sufficiency of capital resources to support those risks. (2017-136, s. 1.)

§ 58-10-710. Risk management framework.

An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer. (2017-136, s. 1.)

§ 58-10-715. ORSA requirement.

Subject to G.S. 58-10-725, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an ORSA consistent with a process comparable to the ORSA Guidance Manual. The ORSA shall be conducted no less than annually but also at

any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member. (2017-136, s. 1.)

§ 58-10-720. ORSA Summary Report.

(a) No more than once each year, an insurer shall submit to the Commissioner an ORSA Summary Report under the following circumstances:

- (1) If the insurer is a member of an insurance group, and the Commissioner is the lead state Commissioner of that insurance group as determined following the procedures within the Financial Analysis Handbook adopted by the NAIC, then the insurer shall submit the ORSA Summary Report to the Commissioner.
- (2) If subdivision (1) of this subsection does not apply to the insurer, then the insurer shall submit the ORSA Summary Report upon the Commissioner's request.

(b) The reports shall include a signature of the insurer or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process attesting to the best of their belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA Summary Report and that a copy of the report has been provided to the insurer's board of directors or to the appropriate committee of the board of directors.

(c) An insurer may comply with subsection (a) of this section by providing the most recent and substantially similar reports provided by the insurer or another member of an insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the ORSA Guidance Manual. Any such report in a language other than English must be accompanied by a translation of that report into the English language. (2017-136, s. 1.)

§ 58-10-725. Exemption.

(a) An insurer shall be exempt from the requirements of this Part if it meets both of the following standards:

- (1) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than five hundred million dollars (\$500,000,000).
- (2) The insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than one billion dollars (\$1,000,000,000).

(b) If an insurer qualifies for exemption pursuant to subdivision (1) of subsection (a) of this section, but the insurance group of which the insurer is a member does not qualify

for exemption pursuant to subdivision (2) of subsection (a) of this section, then the ORSA Summary Report that may be required pursuant to G.S. 58-10-720 shall include every insurer within the insurance group, regardless of whether an insurer meets the standard of subdivision (1) of subsection (a) of this section. This requirement may be satisfied by the submission of more than one ORSA Summary Report for any combination of insurers within the group, provided that the reports, taken together, include every insurer within the insurance group.

(c) If an insurer does not qualify for exemption pursuant to subdivision (1) of subsection (a) of this section, but the insurance group of which it is a member qualifies for exemption pursuant to subdivision (2) of subsection (a) of this section, then the only ORSA Summary Report that may be required pursuant to G.S. 58-10-720 shall be the report applicable to that insurer.

(d) An insurer that does not qualify for exemption pursuant to subsection (a) of this section may apply to the Commissioner for a waiver from the requirements of this Part based upon unique circumstances. In deciding whether to grant the insurer's request for waiver, the Commissioner may consider the type and volume of business written, ownership and organizational structure, and any other factor the Commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the Commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

(e) Notwithstanding the exemptions stated in this section:

- (1) The Commissioner may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA Summary Report based on unique circumstances, including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.
- (2) The Commissioner may require that an insurer maintain a risk management framework, conduct an ORSA, and file an ORSA Summary Report if the insurer has a risk-based capital company action level event as set forth in G.S. 58-12-11, meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in G.S. 58-30-60, or otherwise exhibits qualities of a troubled insurer as determined by the Commissioner.

(f) If an insurer that qualifies for an exemption pursuant to subsection (a) of this section subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this Part. (2017-136, s. 1.)

§ 58-10-730. Contents of ORSA Summary Report.

(a) The ORSA Summary Report shall be prepared consistent with the ORSA Guidance Manual, subject to the requirements of subsection (b) of this section. Documentation and supporting information shall be maintained and made available upon examination or upon request of the Commissioner.

(b) The review of the ORSA Summary Report, and any additional requests for information, shall be made using procedures similar to those currently used in the analysis and examination of multistate or global insurers and insurance groups. (2017-136, s. 1.)

§ 58-10-735. Confidentiality.

(a) Documents, materials, or other information, including the ORSA Summary Report, in the possession of or control of the Commissioner that are obtained by, created by, or disclosed to the Commissioner or any other person under this Part, is recognized by this State as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall not be considered a public record under either G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(b) Neither the Commissioner nor any person who received documents, materials, or other ORSA-related information, through examination or otherwise, while acting under the authority of the Commissioner or with whom such documents, materials, or other information are shared pursuant to this Part shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a) of this section.

(c) In order to assist in the performance of the Commissioner's regulatory duties, the Commissioner:

- (1) May, upon request, share documents, materials, or other ORSA-related information, including the confidential and privileged documents, materials, or information subject to subsection (a) of this section and any proprietary and trade secret documents and materials, with other state, federal, and international financial regulatory agencies. For purposes of this subdivision, financial regulatory agencies shall include members of any supervisory college as defined in G.S. 58-19-37, the NAIC, and any third-party consultants designated by the Commissioner. Recipients of information under this subdivision must agree in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and verify in writing the recipient's legal authority to maintain confidentiality.
- (2) May receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials, or

information and proprietary and trade secret information or documents, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in G.S. 58-19-37, and from the NAIC. The Commissioner shall maintain as confidential or privileged any documents, materials, or information received pursuant to this subdivision with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(3) Shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this Part, consistent with this subsection, that shall do all of the following:

- a. Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this Part, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.
- b. Specify that ownership of information shared with the NAIC or a third-party consultant pursuant to this Part remains with the Commissioner, and the NAIC's or a third-party consultant's use of the information is subject to the direction of the Commissioner.
- c. Prohibit the NAIC or third-party consultant from storing the information shared pursuant to this Part in a permanent database after the underlying analysis is completed.
- d. Require prompt notice be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this Part is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure or production.
- e. Require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this Part.
- f. In the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

(d) The sharing of information and documents by the Commissioner pursuant to this Part shall not constitute a delegation of regulatory authority or rule making, and the Commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this Part.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials, or other ORSA-related information shall

occur as a result of disclosure of such ORSA-related information or documents to the Commissioner under this section or as a result of sharing as authorized in this Part.

(f) Documents, materials, or other information in the possession or control of the NAIC or a third-party consultant pursuant to this Part shall be confidential by law and privileged, shall not be considered a public record under either G.S. 58-2-100 or Chapter 132 of the General Statutes, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. (2017-136, s. 1.)

§ 58-10-740. Sanctions.

(a) Any insurer failing, without just cause, to timely file the ORSA Summary Report as required in this Part shall be subject to a civil penalty of one hundred dollars (\$100.00) for each day's delay, not to exceed a total penalty of one thousand dollars (\$1,000).

(b) Notice and Opportunity to Be Heard Required. – After providing notice and opportunity to be heard in accordance with the provisions of Chapter 150B of the General Statutes, the Commissioner may order the respondent to pay the assessment and civil penalty imposed by this section.

(c) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (2017-136, s. 1.)

§ 58-10-745. Severability clause.

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such determination shall not affect the provisions or applications of this Part which can be given effect without the invalid provision or application, and, to that end, the provisions of this Part are severable. (2017-136, s. 1.)